Dated: April 12, 2013.

**David L. Miller,**

*Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–10349 Filed 5–1–13; 8:45 am]

BILLING CODE 9110–12–P

## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 800

**RIN 3206–AM47**

### Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges; Correction

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the effective date that appeared in the final rule published in the **Federal Register** on March 11, 2013, entitled ''Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges.''

**DATES:** Effective on May 2, 2013, the effective date of the final rule published March 11, 2013 (78 FR 15560) and the final rule correction published March 26, 2013 (78 FR 18246) is corrected to May 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Julia Elam by telephone at (202) 606–2128, by FAX at (202) 606–0033, or by email at *mspp@opm.gov*.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2013–04954 appearing on page 15560 in the **Federal Register** of March 11, 2013, the effective date should be revised to May 13, 2013. In the **Federal Register** of March 26, 2013, in FR Doc. 2013–06782, OPM published corrections to this final rule. The effective date of those corrections should also be revised to May 13, 2013.

In FR Doc. 2013–04954 appearing on page 15560 in the **Federal Register** of Monday, March 11, 2013, and in FR Doc. 2013–06782 appearing on page 18246 in the **Federal Register** of Tuesday, March 26, 2013, the following corrections are made:

1. On page 15560, in the first column, the **DATES** section is corrected to read as follows:

**DATES:** Effective May 13, 2013, except for § 800.503. OPM will publish a document announcing the effective date of § 800.503 in the **Federal Register**.

2. On page 18246, in the first column, the **DATES** section is corrected to read as follows:

**DATES:** These corrections are effective May 13, 2013.

U.S. Office of Personnel Management.

**Robert H. Shriver,**

*Assistant Director, National Healthcare Operations.*

[FR Doc. 2013–10425 Filed 5–1–13; 8:45 am]

BILLING CODE 6325–64–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 13–325; MB Docket No. 12–261; RM–11677]**

### Radio Broadcasting Services; Crownpoint, New Mexico

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Navajo Technical College, an Entity of the Navajo Nation, allots FM Channel †297A as a first Tribal Allotment and a first local transmission service at Crownpoint, New Mexico. (The symbol ''†'' will be used to denote a channel reserved as a Tribal Allotment.) Channel †297A can be allotted at Crownpoint, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 35–41–07 NL and 108–08–43 WL, at a site 0.9 km (0.58 miles) northeast of Crownpoint. *See* **SUPPLEMENTARY INFORMATION** *infra.*

**DATES:** Effective 30 days following publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–261, adopted March 1, 2013, and released March 1, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Crownpoint, Channel †297A.

[FR Doc. 2013–10310 Filed 5–1–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 120912442–3395–02]**

**RIN 0648–XC240**

### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2013 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** We are partially approving 17 sector operations plans and contracts for fishing year (FY) 2013, providing allocations of Northeast (NE) multispecies to these sectors, and granting 23 regulatory exemptions. Approval of sector operations plans is necessary to allocate quotas to the sectors and for the sectors to operate. The NE Multispecies Fishery Management Plan (FMP) allows limited access permit holders to form sectors, and requires sectors to submit their operations plans and contracts to us, NMFS, for approval or disapproval. Approved sectors are exempt from certain effort control regulations and receive allocation of NE multispecies (groundfish) based on their members' fishing history. We are accepting additional public comment on the revised explanation of at-sea monitoring (ASM) coverage for FY 2013 for a 30-day period, and revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels for a 15-day period.

**DATES:** Effective May 1, 2013, through April 30, 2014. Written comments on the revised explanation of at-sea monitoring (ASM) coverage for FY 2013 must be received on or before June 3, 2013. Written comments on revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels must be received on or before May 17, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0007, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0007,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Allison Murphy, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* 978–281–9135; Attn: Allison Murphy.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocations to a sector of a total allowable catch (TAC) for specific NE multispecies species. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized 17 new sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors). The final rule implementing FW 48, which is expected to be published soon after this final rule and to be effective on May 1, 2013, will include the approval or disapproval of several requirements, including a measure that would eliminate dockside monitoring (DSM) requirements, revisions to ASM requirements, and modifications to the minimum sizes for several NE multispecies stocks. The final rule implementing FW 50, which is also expected to be published soon after this final rule, will include the approval or disapproval of several requirements, including commercial annual catch limits (ACLs) and the allocation of southern New England/Mid-Atlantic (SNE/MA) winter flounder to sectors.

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' Sectors are self-selecting, meaning each sector can choose its members.

The NE multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE). These allocations are a portion of a stock's ACL that is available to commercial NE multispecies vessels, and are based on the collective fishing history of a sector's members. Currently, sectors may receive allocations of most large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish. Ocean pout, a small mesh NE multispecies and part of the NE multispecies complex, is also not an allocated stock. Non-allocated stocks may not be landed or sold. A sector determines how to harvest its ACEs and may decide to consolidate operations to fewer vessels.

Because sectors receive an allocation under a quota-based system, the FMP grants sector vessels several ''universal'' exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; the Georges Bank (GB) Seasonal Closure Area; NE multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas. The FMP currently prohibits sectors from requesting exemptions from year-round mortality closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). The final rule implementing FW 48, which is expected to be published soon after this final rule and to be effective May 1, 2013, proposes a measure to allow sectors to request access to portions of the year-round mortality CAs that were not designed to protect essential fish habitat, and not being considered for designation as essential fish habitat in the Omnibus Habitat Amendment action currently being developed. Sectors consequently have requested exemptions from year-round mortality CAs in their FY 2013 operations plans.

Of the 24 approved sectors, we received operations plans and contracts for FY 2013 from 18 sectors. One of the 18 operations plans and contracts was submitted by the Tri-State Sector. Because no vessels elected to join the Tri-State Sector, it does not meet the three member minimum requirement for sectors. Therefore, its proposed operations plan and contract were disapproved. Six of the 24 sectors did not submit operations plans or contracts for FY 2013: The GB Cod Hook Sector; Northeast Fishery Sector I; the State of Maine Permit Bank Sector; the State of New Hampshire Permit Bank Sector; the

Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. Amendment 17 to the FMP allows a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942, March 23, 2012). These permit banks are required to submit a list of participating permits to us by a date specified in the permit bank's Memorandum of Agreement, typically April 1. The State of Maine Permit Bank and the New Hampshire Permit Bank are currently operating under the Amendment 17 requirements.

We determined that the remaining 17 sector operations plans and contracts, and 23 of the 39 regulatory exemptions, are consistent with the goals of the FMP and meet sector requirements outlined in the regulations at § 648.87. The remaining 17 operations plans are similar to previously-approved versions, but include new exemption requests, proposals for industry-funded ASM plans, and two sectors submitted proposals to fish when one or more of their NE multispecies allocations are exhausted. Copies of the operations plans and contracts, and the EA, are available at *http://www.regulations.gov* and from NMFS (see **ADDRESSES**). Of the 17 approved operations plans and contracts, the Northeast Fishery Sector IV and Sustainable Harvest Sector 3 are approved to operate as lease-only sectors. The Sustainable Harvest Sector 3 operation plan has not explicitly prohibited fishing activity, and it may transfer permits to active vessels. We summarize many of the sector requirements in this final rule and grant 23 of the requested regulatory exemptions, but deny the remaining 16 requests for the reasons noted in this rule.

**Sector Allocations**

Sectors typically submit membership information to us on December 1 prior to the start of the next FY. Due to uncertainty regarding ACLs for several stocks in FY 2013 and a corresponding delay in distributing a letter describing each vessel's potential contribution to a sector's quota for FY 2013, we extended the deadline to join a sector to March 29, 2013. Based on sector enrollment as of March 29, 2013, we have calculated the FY 2013 projected allocations in this final rule. In addition to the membership delay, all permits that change ownership after December 1, 2012, retain the ability to join a sector through April 30, 2013. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2013, to withdraw from a sector and fish in the common pool for FY 2013. We will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2013.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock, as approved in FW 50. Table 1 shows the projected total PSC for each sector by stock for FY 2013. Table 2 shows the total percentage of each commercial sub-ACL each sector would receive for FY 2013, based on their preliminary FY 2013 rosters. Tables 3 and 4 show the allocations each sector would be allocated for FY 2013, also based on their preliminary FY 2013 rosters. At the start of the FY, we provide the final allocations, to the nearest pound, to the individual sectors, and we use those final allocations to monitor sector catch. While the common pool does not receive a specific allocation, the common pool sub-ACLs have been included in each of these tables for comparison.

We do not assign an individual permit a PSC for Eastern GB cod or Eastern GB haddock; instead, we assign a total PSC for these GB stocks to a permit. Each sector's GB cod and GB haddock allocation is then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area.

At the start of FY 2013, we will withhold 20 percent of each sector's FY 2013 allocation until we finalize FY 2012 catch information. Further, we will allow sectors to transfer ACE for 2 weeks to reduce or eliminate any FY 2012 overages. If necessary, we will reduce any sector's FY 2013 allocation to account for a remaining overage in FY 2012. We will notify the Council and sector managers of two-week transfer window in writing and will announce this decision on our Web site at *http://www.nero.noaa.gov/.*

BILLING CODE 3510–22–P

Table 1. Cumulative PSC (percentage) each sector would receive by stock for FY 2013.*^

| Sector Name | MRI Count | GB Cod† | GOM Cod | GB Haddock† | GOM Haddock | GB Yellowtail Flounder | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder‡ | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | Redfish | White Hake | Pollock | SNE/MA Winter Flounder |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| GB Cod Fixed Gear Sector (Fixed Gear Sector) | 108 | 27.7101362 | 2.42884081 | 5.76391292 | 1.83604933 | 0.01239036 | 0.30448098 | 2.755986019 | 0.90709701 | 2.10047076 | 0.02759204 | 3.73630723 | 2.73829123 | 5.68197465 | 7.37617397 | 1.64444346 |
| Maine Coast Community Sector (MCCS) | 46 | 0.21083841 | 4.59677491 | 0.03943619 | 2.55120877 | 0.00351803 | 0.66351663 | 1.051832154 | 7.55627854 | 5.06061716 | 0.00656228 | 1.96283344 | 2.50133526 | 4.39575742 | 3.79863604 | 0.1936265 |
| Maine Permit Bank | 11 | 0.13357152 | 1.14928855 | 0.04435742 | 1.11977749 | 0.01377659 | 0.03195638 | 0.318013856 | 1.16457294 | 0.72691985 | 0.00021743 | 0.42515589 | 0.82162937 | 1.65243003 | 1.68807376 | 0.01800823 |
| Northeast Coastal Communities Sector (NCCS) | 26 | 0.1710655 | 0.70545792 | 0.12128594 | 0.33999365 | 0.83885021 | 0.72679065 | 0.60992942 | 0.14839354 | 0.21716705 | 0.06855213 | 0.90305609 | 0.43080503 | 0.78688343 | 0.41883159 | 0.2988038 |
| Northeast Fishery Sector (NEFS) 2 | 81 | 6.188814 | 18.3859731 | 11.9359911 | 16.5683791 | 1.95391907 | 1.42365583 | 19.37821484 | 8.10072134 | 12.9815256 | 3.30133309 | 18.4782786 | 16.0390001 | 6.32425123 | 12.1940283 | 3.2871185 |
| NEFS 3 | 80 | 1.25927679 | 14.3890163 | 0.15800963 | 9.63844924 | 0.04868 | 0.41086569 | 8.570642752 | 4.08765549 | 2.87149863 | 0.03272047 | 9.32791107 | 1.3402664 | 4.73431636 | 6.78031698 | 0.77845602 |
| NEFS 4 | 50 | 4.13504651 | 9.6076479 | 5.31663788 | 8.3517643 | 2.16228012 | 2.27347885 | 5.468062762 | 9.29301588 | 8.49485333 | 0.69481994 | 6.23737361 | 6.64087663 | 8.05655731 | 6.14176606 | 0.8718376 |
| NEFS 5 | 34 | 0.83979035 | 0.01807245 | 1.10814435 | 0.30020872 | 1.68128354 | 23.8808403 | 0.505502423 | 0.52782832 | 0.73137926 | 0.61293527 | 0.0838401 | 0.07796893 | 0.12278797 | 0.10793467 | 12.8691807 |
| NEFS 6 | 21 | 2.85699495 | 2.92696328 | 2.92245926 | 3.83440361 | 2.69894107 | 5.17699971 | 3.56413348 | 3.87833741 | 5.17455953 | 1.42060383 | 4.36836585 | 5.30953764 | 3.91320466 | 3.29312287 | 1.92079477 |
| NEFS 7 | 23 | 5.20966429 | 0.39199999 | 4.95464255 | 0.47124959 | 11.3166576 | 4.44460959 | 2.858782532 | 3.59163775 | 3.29232637 | 14.8669094 | 0.83565472 | 0.58566411 | 0.82528849 | 0.72521212 | 6.34625539 |
| NEFS 8 | 20 | 6.14364645 | 0.49775994 | 5.67107922 | 0.21438394 | 10.9430488 | 5.60245933 | 6.419338456 | 1.65096546 | 2.54415541 | 14.5666974 | 3.38217528 | 0.53508283 | 0.50280665 | 0.59747146 | 10.1236661 |
| NEFS 9 | 60 | 14.2398155 | 1.73637965 | 11.6037977 | 4.79529081 | 26.7845786 | 7.97239388 | 10.38991012 | 8.27370655 | 8.27695095 | 39.570022 | 2.43945895 | 5.83126789 | 4.15313565 | 4.22826207 | 18.5931367 |
| NEFS 10 | 44 | 0.72938852 | 5.24263643 | 0.2514571 | 2.53225576 | 0.01699956 | 0.54851304 | 12.78785243 | 1.77246791 | 2.42605724 | 0.01384801 | 26.9228141 | 0.54820424 | 0.91303047 | 1.3930973 | 0.74995849 |
| NEFS 11 | 42 | 0.39377347 | 11.2180586 | 0.03566645 | 2.35454724 | 0.00080292 | 0.01734668 | 2.104580535 | 1.35256504 | 1.46688274 | 0.0008961 | 1.9337841 | 0.93657382 | 2.3447868 | 6.46136539 | 0.01808927 |
| NEFS 12 | 11 | 0.01543632 | 2.42509402 | 0.00263497 | 0.85919914 | 0.00075483 | 0.00225466 | 0.482777447 | 0.74897571 | 0.6075265 | 0.00250315 | 0.31608371 | 1.05934489 | 2.49635418 | 2.96055727 | 0.00359645 |
| NEFS 13 | 54 | 7.95752564 | 0.94828136 | 16.0841772 | 0.98811725 | 24.9327838 | 19.0663115 | 5.031610077 | 5.1623228 | 6.26569658 | 7.46735879 | 2.34088467 | 3.98066441 | 1.73926129 | 2.27098506 | 11.0308162 |
| New Hampshire Permit Bank | 4 | 0.00212423 | 1.13721108 | 0.00025965 | 0.03111747 | 2.0573E-05 | 2.029E-05 | 0.021810976 | 0.02849 | 0.00616 | 5.9866E-06 | 0.06027627 | 0.01939591 | 0.08126812 | 0.1108933 | 7.8926E-05 |
| Sustainable Harvest Sector 1 | 118 | 19.6967932 | 19.4671206 | 33.08583 | 42.1888518 | 13.1930148 | 8.23227672 | 12.8398961 | 39.3154315 | 34.2745736 | 16.3366871 | 10.2540575 | 50.0164018 | 50.4217908 | 38.7300432 | 18.4512242 |
| Sustainable Harvest Sector 3 | 21 | 0.40204015 | 0.51684787 | 0.51916086 | 0.18474566 | 2.10525891 | 3.15510269 | 2.066674464 | 0.67535524 | 0.76205815 | 0.43290774 | 2.30829664 | 0.19264919 | 0.15391626 | 0.05705049 | 1.6746768 |
| Common Pool | 526 | 1.70425801 | 2.21057526 | 0.38105969 | 0.84000715 | 1.29244059 | 16.0661266 | 2.774449163 | 1.76418161 | 1.71862123 | 0.5768279 | 3.68339217 | 0.39504037 | 0.70019818 | 0.66617809 | 11.1262319 |

*The data in this table are based on preliminary FY 2013 sector rosters.

^Percentages have been rounded to two decimal places in this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is actually allocated a small amount of that stock.

† For FY 2013, 5.31 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 15.09 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 2. Proposed ACE (in 1,000 lb), by stock, for each sector for FY 2013.*^

| Sector Name | GB Cod-East | GB Cod-West | GOM Cod | GB Haddock-East | GB Haddock-West | GOM Haddock | GB Yellowtail Flounder† | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | Redfish | White Hake | Pollock | SNE/MA Winter Flounder |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Fixed Gear Sector | 56 | 1048 | 44 | 477 | 2852 | 8 | TBD | 4 | 29 | 28 | 28 | 2 | 59 | 612 | 420 | 2097 | 44 |
| MCCS | 0 | 8 | 84 | 3 | 20 | 11 | TBD | 8 | 11 | 237 | 68 | 1 | 31 | 559 | 325 | 1080 | 5 |
| Maine Permit Bank | 0 | 5 | 21 | 4 | 22 | 5 | TBD | 0 | 3 | 36 | 10 | 0 | 7 | 184 | 122 | 480 | 0 |
| NCCS | 0 | 6 | 13 | 10 | 60 | 1 | TBD | 9 | 6 | 5 | 3 | 5 | 14 | 96 | 58 | 119 | 8 |
| NEFS 2 | 13 | 234 | 336 | 988 | 5905 | 68 | TBD | 18 | 205 | 254 | 175 | 257 | 291 | 3583 | 467 | 3466 | 88 |
| NEFS 3 | 3 | 48 | 263 | 13 | 78 | 40 | TBD | 5 | 91 | 128 | 39 | 3 | 147 | 299 | 350 | 1927 | 21 |
| NEFS 4 | 8 | 156 | 176 | 440 | 2630 | 34 | TBD | 29 | 58 | 291 | 114 | 54 | 98 | 1483 | 595 | 1746 | 23 |
| NEFS 5 | 2 | 32 | 0 | 92 | 548 | 1 | TBD | 300 | 5 | 17 | 10 | 48 | 1 | 17 | 9 | 31 | 343 |
| NEFS 6 | 6 | 108 | 54 | 242 | 1446 | 16 | TBD | 65 | 38 | 121 | 70 | 110 | 69 | 1186 | 289 | 936 | 51 |
| NEFS 7 | 11 | 197 | 7 | 410 | 2451 | 2 | TBD | 56 | 30 | 112 | 44 | 1156 | 13 | 131 | 61 | 206 | 169 |
| NEFS 8 | 12 | 232 | 9 | 469 | 2806 | 1 | TBD | 70 | 68 | 52 | 34 | 1133 | 53 | 120 | 37 | 170 | 270 |
| NEFS 9 | 29 | 538 | 32 | 960 | 5741 | 20 | TBD | 100 | 110 | 259 | 111 | 3078 | 38 | 1303 | 307 | 1202 | 496 |
| NEFS 10 | 1 | 28 | 96 | 21 | 124 | 10 | TBD | 7 | 135 | 55 | 33 | 1 | 424 | 122 | 67 | 396 | 20 |
| NEFS 11 | 1 | 15 | 205 | 3 | 18 | 10 | TBD | 0 | 22 | 42 | 20 | 0 | 30 | 209 | 173 | 1837 | 0 |
| NEFS 12 | 0 | 1 | 44 | 0 | 1 | 4 | TBD | 0 | 5 | 23 | 8 | 0 | 5 | 237 | 184 | 842 | 0 |
| NEFS 13 | 16 | 301 | 17 | 1331 | 7958 | 4 | TBD | 240 | 53 | 162 | 84 | 581 | 37 | 889 | 129 | 646 | 294 |
| New Hampshire Permit Bank | 0 | 0 | 21 | 0 | 0 | 0 | TBD | 0 | 0 | 1 | 0 | 0 | 1 | 4 | 6 | 32 | 0 |
| Sustainable Harvest Sector 1 | 40 | 745 | 356 | 2738 | 16370 | 174 | TBD | 103 | 136 | 1231 | 461 | 1271 | 162 | 11172 | 3726 | 11009 | 492 |
| Sustainable Harvest Sector 3 | 1 | 15 | 9 | 43 | 257 | 1 | TBD | 40 | 22 | 21 | 10 | 34 | 36 | 43 | 11 | 16 | 45 |
| **Sectors Total** | **199** | **3716** | **1789** | **8245** | **49288** | **409** | **TBD** | **1055** | **1027** | **3075** | **1322** | **7733** | **1518** | **22249** | **7338** | **28235** | **2371** |
| Common Pool | 3 | 64 | 40 | 32 | 189 | 3 | TBD | 202 | 29 | 55 | 23 | 45 | 58 | 88 | 52 | 189 | 297 |

*The data in this table are based on preliminary FY 2013 sector rosters. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

†FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

Table 3. Proposed ACE (in metric tons), by stock, for each sector for FY 2013.*^†

| Sector Name | GB Cod-East | GB Cod-West | GOM Cod | GB Haddock-East | GB Haddock-West | GOM Haddock | GB Yellowtail Flounder† | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | Redfish | White Hake | Pollock | SNE/MA Winter Flounder |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Fixed Gear Sector | 25 | 475 | 20 | 216 | 1294 | 3 | TBD | 2 | 13 | 13 | 13 | 1 | 27 | 277 | 190 | 951 | 20 |
| MCCS | 0 | 4 | 38 | 1 | 9 | 5 | TBD | 4 | 5 | 107 | 31 | 0 | 14 | 253 | 147 | 490 | 2 |
| Maine Permit Bank | 0 | 2 | 10 | 2 | 10 | 2 | TBD | 0 | 2 | 17 | 4 | 0 | 3 | 83 | 55 | 218 | 0 |
| NCCS | 0 | 3 | 6 | 5 | 27 | 1 | TBD | 4 | 3 | 2 | 1 | 2 | 6 | 44 | 26 | 54 | 4 |
| NEFS 2 | 6 | 106 | 153 | 448 | 2679 | 31 | TBD | 8 | 93 | 115 | 79 | 116 | 132 | 1625 | 212 | 1572 | 40 |
| NEFS 3 | 1 | 22 | 119 | 6 | 35 | 18 | TBD | 2 | 41 | 58 | 18 | 1 | 67 | 136 | 159 | 874 | 9 |
| NEFS 4 | 4 | 71 | 80 | 200 | 1193 | 16 | TBD | 13 | 26 | 132 | 52 | 25 | 45 | 673 | 270 | 792 | 11 |
| NEFS 5 | 1 | 14 | 0 | 42 | 249 | 1 | TBD | 136 | 2 | 7 | 4 | 22 | 1 | 8 | 4 | 14 | 156 |
| NEFS 6 | 3 | 49 | 24 | 110 | 656 | 7 | TBD | 30 | 17 | 55 | 32 | 50 | 31 | 538 | 131 | 425 | 23 |
| NEFS 7 | 5 | 89 | 3 | 186 | 1112 | 1 | TBD | 25 | 14 | 51 | 20 | 525 | 6 | 59 | 28 | 94 | 77 |
| NEFS 8 | 6 | 105 | 4 | 213 | 1273 | 0 | TBD | 32 | 31 | 23 | 16 | 514 | 24 | 54 | 17 | 77 | 122 |
| NEFS 9 | 13 | 244 | 14 | 436 | 2604 | 9 | TBD | 45 | 50 | 117 | 50 | 1396 | 17 | 591 | 139 | 545 | 225 |
| NEFS 10 | 1 | 13 | 44 | 9 | 56 | 5 | TBD | 3 | 61 | 25 | 15 | 0 | 192 | 56 | 31 | 180 | 9 |
| NEFS 11 | 0 | 7 | 93 | 1 | 8 | 4 | TBD | 0 | 10 | 19 | 9 | 0 | 14 | 95 | 79 | 833 | 0 |
| NEFS 12 | 0 | 0 | 20 | 0 | 1 | 2 | TBD | 0 | 2 | 11 | 4 | 0 | 2 | 107 | 84 | 382 | 0 |
| NEFS 13 | 7 | 136 | 8 | 604 | 3610 | 2 | TBD | 109 | 24 | 73 | 38 | 263 | 17 | 403 | 58 | 293 | 133 |
| New Hampshire Permit Bank | 0 | 0 | 9 | 0 | 0 | 0 | TBD | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 14 | 0 |
| Sustainable Harvest Sector 1 | 18 | 338 | 162 | 1242 | 7425 | 79 | TBD | 47 | 62 | 558 | 209 | 576 | 73 | 5068 | 1690 | 4993 | 223 |
| Sustainable Harvest Sector 3 | 0 | 7 | 4 | 19 | 117 | 0 | TBD | 18 | 10 | 10 | 5 | 15 | 16 | 20 | 5 | 7 | 20 |
| **Sectors Total** | **90** | **1686** | **812** | **3740** | **22356** | **185** | **TBD** | **478** | **466** | **1395** | **600** | **3508** | **688** | **10092** | **3329** | **12807** | **1075** |
| Common Pool | 2 | 29 | 18 | 14 | 86 | 2 | TBD | 92 | 13 | 25 | 10 | 20 | 26 | 40 | 23 | 86 | 135 |

*The data in this table are based on preliminary FY 2013 rosters. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

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**Sector Operations Plans and Contracts**

We received 18 sector operations plans and contracts by the September 4, 2012, deadline. Each sector elected to submit a single document that is both its contract and operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds each member to the sector. The sector formerly known as the Port Clyde Community Groundfish Sector has submitted its operations plan under a new name, the Maine Coast Community Sector. While the Tri-State Sector submitted an operations plan for FY 2013, no members elected to join the sector. The Tri-State Sector's operations plan is therefore disapproved because the sector did not meet membership requirements. Most sectors proposed operations plans are for a single FY, i.e., FY 2013. NEFS 4 submitted a 2-yr operations plan. Because the EA only analyzes operations in FY 2013, NEFS 4 is only approved to operate in FY 2013. Each sector's operations plan, and sector members, must comply with the regulations governing sectors, which are found at § 648.87. In addition, each sector and sector member must conduct fishing activities as detailed in its approved operations plan.

Any permit holder with a limited access NE multispecies permit that was valid as of May 1, 2008, is eligible to participate in a sector, including any inactive permit currently held in confirmation of permit history (CPH). If a permit holder officially enrolls a permit in a sector and the FY begins, then that permit must remain in the sector for the entire FY, and cannot fish in the NE multispecies fishery outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted and detailed in the letter of authorization (LOA) issued by the Regional Administrator. If, during a FY, a sector requests an exemption that we have already approved, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any amendments require modifications to LOAs, we would include these changes in updated LOAs and provide the updated LOAs to the appropriate sector's members.

Each sector is required to ensure that it does not exceed its ACE during the FY. Sector vessels are required to retain all legal-sized allocated NE multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated NE multispecies stocks by a sector's vessels count against the sector's allocation. Catch from a sector trip (e.g., not fishing under provisions of a regulatory NE multispecies exempted fishery or with exempted gear) targeting dogfish, monkfish, skate, or lobster (with non-trap gear) would be deducted from the sector's ACE, because these trips use gear capable of catching groundfish. Catch from a trip in an exempted fishery does not count against a sector's allocation, because the catch is assigned to a separate ACL sub-component.

We provide sectors with calculated discard rates to apply to unobserved sector trips, based on discard rates from observed trips. Amendment 16 required sectors to develop independent third-party DSM programs to verify landed weights reported by the dealer. We previously funded DSM for FY 2010 and part of FY 2011, but suspended DSM for the remainder of FY 2011 and 2012. The FW 48 proposed rule has proposed the elimination of the requirement for DSM for FY 2013.

For FYs 2010 and 2011, there was no requirement for an industry-funded ASM program, but NMFS was able to fund an ASM program with a target ASM coverage rate of 30 percent of all trips. For FY 2012, we conducted an analysis to determine the FY 2012 ASM coverage rate that would be necessary to achieve the same level of precision as attained by the target 30-percent ASM coverage rate used for FY's 2010 and 2011, and ultimately set a target ASM coverage rate for FY 2012 of 25 percent, which was 17 percent more than the 8-percent Northeast Fishery Observer Program (NEFOP) coverage that supports the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments.

The regulations require sectors to design, implement, and fund an ASM program in FY 2013 that will provide a level of ASM coverage specified by NMFS. Amendment 16 regulations require NMFS to specify a level of ASM coverage that is sufficient to at least meet the same coefficient of variation (CV) specified in the SBRM and also to accurately monitor sector operations. The final rule implementing FW 48, should it be approved, clarifies what level of ASM coverage is expected to meet these goals. Regarding meeting the SBRM CV level, FW 48 states that this determination should be made at the overall stock level, which is consistent with the level NMFS determined was necessary in FY 2012. FW 48 also proposes to amend the goals of the sector monitoring program to achieve an accuracy level sufficient to minimize effects of potential monitoring bias to the extent practicable, while maintaining as much flexibility as possible to enhance fleet vitality.

Taking these provisions of FW 48 into account, and interpreting the ASM monitoring provision in the context of Magnuson-Stevens Act requirements and National Standards, we have determined that the appropriate level of ASM coverage should be set to meet the CV requirement specified in the SBRM, and minimize the cost burden to the extent practicable, while still providing a reliable estimate of overall catch by sectors needed to sufficiently monitor ACEs and ACLs. Based on this standard, NMFS has determined that the appropriate ASM coverage rate for FY 2013 is 14 percent, in addition to the expected 8-percent coverage rate provided under NEFOP. We expect these two programs to result in coverage of 22 percent of all sector trips, and we will use the discards from these observed and monitored trips to calculate discards for unobserved sector trips. We have published a more detailed summary of the supporting information, explanation and justification for this decision at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.* This summary has since been updated to address additional comments received from Oceana on the settlement agreement.

This summary, in addition to providing sectors and the public with a full and transparent explanation of the appropriate level of ASM coverage of sector operations, complies with a settlement agreement entered into by NMFS and Oceana, Inc. The settlement agreement resolved a lawsuit brought by Oceana challenging the approval of the 2012 sector operations plans primarily on grounds that the agency failed to adequately justify and explain that the ASM coverage rate specified for FY 2012 would accurately monitor the catch to effectively enforce catch limits in the groundfish fishery. We are providing additional opportunity to comment on this provision through this interim final rule.

Prior to the publication of the proposed rule, we did not have confirmation on funding resources for FY 2013. We have since announced that we will pay for ASM coverage of sector trips during FY 2013. Therefore, the sector's ASM programs for FY 2013 are no longer applicable, and have been removed from the sector's operations plans.

Sectors are required to monitor their allocations and catch, and submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all fishing operations in that stock area until it acquires more fish, unless that sector has an approved plan to fish without ACE for that stock. ACE may be transferred between sectors, but a transfer to or from common pool vessels are prohibited. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract. A sector, permit/vessel owner, and vessel operator participating in the sector may be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector operations plan submitted for FY 2013 states that the sector would withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract details the method for initial ACE sub-allocation to sector members. For FY 2013, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector.

**Approved FY 2013 Exemptions**

*Previously Approved Exemptions Approved for FY 2013 (1–16)*

We approve exemptions from the following requirements for FY 2013, all of which have been previously requested and approved: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) prohibition on a vessel hauling another vessel's gillnet gear; (4) limits on the number of gillnets that may be hauled on GB when fishing under a NE multispecies/monkfish DAS; (5) limits on the number of hooks that may be fished; (6) DAS Leasing Program length and horsepower restrictions; (7) prohibition on discarding; (8) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (9) powering vessel monitoring systems (VMS) while at the dock; (10) DSM for vessels fishing west of 72°30′ W. long.; (11) DSM for Handgear A-permitted sector vessels; (12) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA); (13) prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (14) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, including the use of codend mesh as small as 4.5-inch (11.4-cm); (15) prohibition on a vessel hauling another vessel's hook gear; and (16) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. These exemptions were used successfully, consistent with the purpose for which they were approved, and benefitted sector operations. The rationale for their approval remains valid. A detailed description of these 16 previously approved exemptions can be found in the FY 2012 proposed rule for sector operations (77 FR 8780, February 15, 2012), which is also available at: *http://www.nero.noaa.gov/sfd/multifr/77FR8780.pdf.*

We approved one of the exemptions above with modifications from its initial approval. We expanded the exemption from using 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM. The exemption originally allowed fishing with 6.0-inch (15.2-cm) codend mesh, and was modified to allow the use of codend mesh size as small as 4.5-inch (11.4-cm) (78 FR 14226, March 5, 2013). The modified exemption as designed to allow more opportunity to catch underutilized redfish ACE. This final rule is available at: *http://www.nero.noaa.gov/regs/2013/March/13redfishfr.pdf.*

We approved this exemption with several requirements, based on catch information from ongoing research. Monthly catch thresholds (80-percent redfish requirement and no more than 5 percent NE multispecies discard requirement) are used to ensure that fishing under this exemption will not adversely affect other NE multispecies stocks. Along with allowing sectors to use a codend with mesh as small as 4.5 inches (11.4 cm) when an observer or at-sea monitor is onboard, we require sectors to develop industry-funded at-sea monitoring programs for trips specifically targeting redfish because monitoring all trips targeting redfish is necessary to adequately monitor bycatch thresholds.

To facilitate monitoring of trips under this exemption, the approved redfish exemption includes a requirement for a vessel to declare whether or not it intends to use the exemption through the trip start hail. A vessel intending to take a redfish trip is required to enter ''R1'' into the free text field of the trip start hail to identify the trip. This hail report will help NMFS, and the sector manager, to identify a trip fishing under the redfish exemption for monitoring purposes.

We will monitor the impacts of the 4.5-inch (11.4-cm) redfish exemption, compliance with monthly catch thresholds, and the impacts of the industry-funded monitoring program on required monitoring programs. We will revoke the 4.5-inch (11.4-cm) redfish exemption during the FY, if necessary, to mitigate negative impacts, and notify sectors and the public, as described later in this rule. Additional information on the requirements for 100-percent industry-funded monitoring programs for exemptions is provided below under Additional Industry-Funded ASM.

*Exemptions of Concern That are Approved for FY 2013 (17–18)*

In FY 2012, we granted sectors exemptions from the following requirements, which we again approve for FY 2013: (17) Limits on the number of gillnets imposed on Day gillnet vessels; and (18) gear requirements in the Eastern U.S./Canada Management Area. We raised concern with continuing to grant these requests based on data analyzed for this rule and requested additional comment on these exemptions.

17. Limits on the Number of Gillnets Imposed on Day Gillnet Vessels

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA) to prevent an uncontrolled increase in the number of nets being fished that would undermine the applicable DAS effort controls. The limits are specific to the type of gillnet within each RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the SNE and MA RMAs (§ 648.80(b)(2)(iv)). We previously approved this exemption in FYs 2010,

2011, and 2012 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. Sectors argued that gillnet limits designed to control fishing effort are no longer necessary because sectors' ACEs limit overall fishing mortality. In the proposed rule we stated that a preliminary effort analysis of all sector vessels using gillnet gear indicates an increase in gear used in the RMAs with no corresponding increase in catch efficiency. The result was more gear being deployed, thereby increasing the opportunity for interactions with protected species without the benefit of increased catch. We raised concern that continued approval of the exemption on gillnet limits could ultimately lead to a rise in interactions with protected species.

Industry, sectors, Maine Department of Marine Resources (DMR), and the Council all supported the continued approval of the exemption, noting negative financial impacts if the exemption were not approved, and efforts made to increase pinger compliance to mitigate concerns for harbor porpoise. However, as several commenters indicated, available data indicate that harbor porpoise interactions have decreased since the approval of this exemption. The Conservation Law Foundation (CLF), Pew, the Union of Concerned Scientists, and Massachusetts Division of Marine Fisheries (MA DMF) raised additional concerns for cod, impacts to non-target species, and the risk for lost gear. We note the reduced interactions with harbor porpoise and approve this exemption again for FY 2013. Based on our concern for spawning cod and the comment by MA DMF, after consulting with the NMFS Northeast Fisheries Science Center (NEFSC) about this concern, we are restricting the use of this exemption to seasons with minimal cod spawning in the GOM, i.e., late spring. Therefore, a vessel fishing in the GOM RMA may use this exemption seasonally, but will be restricted to the 100-net gillnet limit in blocks 124 and 125 in May, and in blocks 132 and 133 in June. A vessel fishing in GB RMA, SNE RMA, and MA RMA, the GOM outside of these times and areas will have no additional restrictions. We will continue to consider potential protected species concerns in the annual approval of this exemption.

18. Gear Requirements in the Eastern U.S./Canada Management Area

The regulations require a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area to use either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)) to ensure that the U.S./Canada quotas of Eastern GB cod and haddock, and GB yellowtail flounder are not exceeded. We approved an exemption from this requirement in FYs 2011 and 2012 to enhance operational flexibility of sectors, reasoning that their overall fishing mortality would continue to be restrained by the sector ACEs.

We raised concern with the continued approval of this exemption because the proposed FY 2013 ACLs for GB cod and GB yellowtail flounder proposed by the Council in FW 50 are dramatically lower than previous years when we granted this exemption. Several comments were submitted supporting the approval of this gear exemption. Commenters argued that effort controls, such as selective gear requirements, are no longer necessary, since sectors are restricted by an ACE. They also stated that sectors should be given the ability to manage their operations to maximize harvest of their ACEs, and the decision to restrict vessels to selective gear should be left to the sector. Based on these comments, we are again approving this exemption for FY 2013.

*Approved Exemptions That Had Previously Been Disapproved (19–21)*

We approve three previously disapproved exemption requests from the following requirements for FY 2013: (19) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (20) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; and (21) DSM requirements for a vessel using hand-operated jig gear. A detailed description of each exemption is included below:

19. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP consists of a portion of the Eastern U.S./Canada Area and a portion of CA II. We implemented this SAP in FW 40A to provide a vessel with additional opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The May 1 through December 31 opening of the SAP allowed a vessel to fish in the area using gear that reduces the catch of cod and other stocks of concern. In FW 42 (71 FR 62156; October 23, 2006), we extended the approval of this SAP and shortened the season to August 1 through December 31 to further reduce cod catch. We subsequently approved additional gear types for use in this SAP through other actions.

For FY 2012, sectors requested an exemption from the seasonal restrictions of the Eastern U.S./Canada Haddock SAP, to access the SAP area year-round. Because NMFS was unclear whether the Council intended to allow sector exemptions from the SAP seasonal restrictions, we disapproved these exemptions in FY 2012. We subsequently proposed the exemption in FY 2013, but expressed concern that an exemption from the seasonal restrictions of SAPs could have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn. The Council subsequently discussed these exemptions in June 2012. In a letter dated June 22, 2012, the Council asked us to open the Eastern U.S./Canada Haddock SAP to trawl vessels using restrictive gear on May 1 of a given FY in order to provide additional fishing opportunities for the NE multispecies fishery to target a healthy stock—GB haddock.

Sectors argued that, because their catch is restricted by ACE, their access to the SAP area, including the northern tip of CA II, should not be seasonally restricted. Sectors further argued that impacts to the physical environment and essential fish habitat (EFH) will be negligible, because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

The proposed rule stated that data initially provided by the NEFSC suggested that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Because of this, we raised a concern in the proposed rule that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn, and proposed to open the SAP from June 1 through December 31.

The Council submitted comments regarding seasonal access to the Eastern U.S./Canada Haddock SAP, citing a recently-completed study conducted by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II, and that found low densities of winter flounder in the area in May. We concur that the updated Smolowitz *et al.* 2012 study shows that GB winter flounder spawning generally does not occur in May. Thus, it is appropriate to

provide access to this SAP beginning in May.

We also received a comment that we should provide access to the SAP in January, given that we raised concern for GB cod from only February through April. The proposed rule incorrectly cited the season of concern for GB cod raised by the NEFSC as beginning in February when it actually is January through April for the Eastern U.S./Canada Haddock SAP (Berrien and Sibunka, 1999). Therefore, we do not believe it is appropriate to extend the season beyond the closure of the SAP on December 31. Based on this information presented by the Council and the general public, we approve an exemption to extend the SAP season to allow access to this area from May 1 through December 31.

For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. For FY 2013, we proposed limiting a sector vessel to use the gear approved for sector vessels in the Eastern U.S/Canada Haddock SAP, which includes: Hook gear, gillnet gear, haddock separator trawl, Ruhle trawl, and flounder net. However, based on comments received noting the need for flexibility and the limitations on fishing mortality in sector ACEs, we are extending the exemption from gear requirements in the Eastern U.S./Canada area (exemption 18) to the SAP, and we are allowing vessels to access the Eastern U.S./Canada SAP with any gear approved for the Eastern U.S./Canada area because sectors are restricted by their ACEs. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

20. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

We implemented the CA II Yellowtail Flounder SAP through Amendment 13 in 2004 to provide an opportunity for vessels to target yellowtail flounder in CA II on a Category B DAS. This SAP requires a vessel to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area during the open season from June 1 through December 31. In 2005, we extended the approval of this SAP though FW 40B, but shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Through Amendment 16, we further revised this SAP in 2010 by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open for targeting of GB yellowtail flounder. Sectors are currently required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When the season is open only to target haddock, a vessel may only use approved trawl gear or hook gear; the flounder net is not authorized. We implemented these gear requirements to limit vessels from catching yellowtail flounder when the SAP was open only for targeting haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area of CA II. Sectors are required to use the same approved gears as the common pool (i.e., haddock separator trawl, Ruhle trawl, or hook gear) to reduce the advantage sector vessels have over common pool vessels. We initially put the seasonal restriction in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer, and spawning NE multispecies in the spring. Sectors argue that their catch is restricted by ACE, and their access to the SAP area in CA II should not be restricted. Sectors further argue that impacts to the physical environment will be negligible because any increase in effort will be minor, and the portion of CA II included in this SAP is outside any HAPC.

The proposed rule for this action stated that data initially provided by the NEFSC suggested that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Because of this, we raised concern our in the proposed rule that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn, and proposed to open the SAP from June 1 through December 31.

The Council submitted comments regarding seasonal access to the CA II Yellowtail Founder/Haddock SAP, citing a recently completed study conducted by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II, and that found low densities of winter flounder in the area in May. We concur that the updated Smolowitz *et al.* 2012 study shows that GB winter flounder spawning generally does not occur in May. Thus, it is appropriate to provide access to this SAP beginning in May. Based on this new information presented by the Council and the general public, we approve an exemption to extend the SAP season to allow access to this area from May 1 through January 31.

For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. For FY 2013, we proposed limiting a sector vessel to use the gear approved for sector vessels in the CA II Yellowtail Flounder/Haddock SAP, which includes hook gear, haddock separator trawl, and Ruhle trawl. However, based on public comments, we are extending the exemption from gear requirements in the Eastern U.S./Canada area (exemption 18) to the SAP, also allowing vessels to use a standard otter trawl in the CA II Yellowtail Flounder/Haddock SAP because sectors are restricted by their ACEs,. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

21. DSM Requirements for Vessel Using Hand-Operated Jig Gear

In the NE multispecies fishery, we define jigging as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, and which is moved with an up and down motion (§ 648.2). Jigging gear is not exempted gear; therefore, a vessel using this gear is required to participate in the DSM program so that offload of all NE multispecies trips are adequately monitored.

We received a request to exempt sector vessels using jig gear from DSM requirements, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector argues that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

To gauge the potential impact of approving this exemption, we reviewed observer and ASM data from the 12 monitored trips in FYs 2010 and 2011 that used jig gear. For these trips, discards accounted for approximately 6 percent of the roughly 16,000 lb (7,257 kg) of catch. We believe these discards to be a *de minimis* amount, and are therefore approving this exemption. Because FW 48 is considering the elimination of the DSM program, the approval of this exemption, as well as the previously approved DSM

exemptions, may be superseded by final decisions on FW 48 measures. Should the FW 48 measure to eliminate the DSM program be approved, exemptions from all DSM requirements become unnecessary.

*New Exemptions Approved for FY 2013 (22–23)*

Two new exemption requests from the following requirements are approved for FY: (22) The prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard; and (23) sampling exemption. A detailed description of each exemption is included below:

22. Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.6(l)) to help rebuild the stock beginning in FY 2010. Currently, a vessel with GOM or GB winter flounder on board can transit through the SNE/MA winter flounder stock area, but cannot fish in the SNE/MA winter flounder stock area, and its gear must be stowed in accordance with the provisions of § 648.23(b). This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area.

Sectors requested an exemption from the prohibition on fishing in the SNE/MA winter flounder stock area when GOM or GB winter flounder is onboard the vessel, provided a NEFOP observer or at-sea monitor is assigned to the trip. Sectors asserted that the data collection protocols used by observers and at-sea monitors, including documentation of catch (both landings and discards), as well as stock area, would provide the data necessary to differentiate and correctly apportion the winter flounder catch onboard to the appropriate stock area. Sectors believe that, if approved, this exemption would increase flexibility and efficiency of fishing vessels, allowing vessels to move freely between stock areas when an observer or at-sea monitor is onboard, increase gross revenue per trip, and decrease operating costs. We agree, and, we are approving this exemption for FY 2013. Please note that FW 50 has proposed a measure to allocate this stock to sectors beginning in FY 2013. Thus, this exemption will no longer be necessary if this provision is approved in FW 50.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are approving several of these requests, provided an industry-funded monitor is deployed on 100 percent of trips using the exemptions, including the exemption from the prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard. Additional information on the requirements for 100-percent industry-funded monitoring programs for exemptions is provided below under Additional Industry-Funded ASM.

This approved exemption includes a requirement for a vessel to declare whether or not it intends to use the exemption through the trip start hail. A vessel intending to take a trip in the SNE/MA winter flounder stock area with winter flounder onboard is required to enter ''F4'' in the free text field of the trip start hail to identify the trip for monitoring purposes.

23. Sampling Exemption

Conducting scientific research on regulated fishing trips may require special permits, depending on the activities proposed. A temporary research permit authorizes a federally permitted fishing vessel that is accompanied by a research technician, typically staff for the principal investigator, to temporarily retain fish that are not compliant with applicable fishing regulations to collect catch data such as length and weight. Under a temporary possession permit, a vessel may be exempt from specific regulations, including minimum fish sizes, closures, and possession limits. Sampled fish are returned to the sea as soon as practicable after sampling.

Some sectors proposed independent sampling programs, where data would be collected from fish that otherwise must be immediately discarded, as described above. Sectors already provided the information required in an application as part of the sector's operations plan. Through this rule, we are approving sectors for temporary possession permits for research purposes. This provision would be included in a sector vessel's LOA, which will aid enforcement officials in determining approved activities, with the same restrictions as when a temporary permit is obtained through the application process.

**Disapproved FY 2013 Exemption Requests**

*Previously Approved Exemption Disapproved for FY 2013*

Sectors again requested the GOM sink gillnet mesh exemption in May, and January through April. This exemption was previously approved to provide seasonal access to target GOM haddock. Given the small ACL proposed for GOM haddock in FW 50, we are disapproving this exemption. A detailed description of this exemption is included below:

24. GOM Sink Gillnet Mesh Exemption in May, and January Through April

The minimum mesh size requirements of 6.5 inches (16.5 cm) in the GOM RMA was implemented to reduce overall mortality on groundfish stocks, to reduce discarding, and improve survival of sub-legal groundfish. We previously approved two separate seasonal exemptions from the minimum mesh size requirement in the GOM for FYs 2010–2012 to allow a sector vessel to use 6-inch (15.2-cm) mesh stand-up gillnets in the GOM RMA. The initial exemption, approved in FY 2010, allowed the use of the exemption in January–April. The second exemption, approved in FY 2011, added the month of May. In the proposed rule for FY 2013, we combined these requests into a single exemption. This exemption provides the opportunity to catch more GOM haddock, a stock previously considered rebuilt, during the months that haddock are most prevalent.

We raised two concerns regarding the status of GOM haddock and potential impacts to protected species in the proposed rule, and received numerous comments. Most industry members, one sector, sector support groups, and the Maine Department of Marine Resources (ME DMR) commented in favor of granting the exemption. One sector and the MA DMF recommended disapproval, agreeing with our concerns highlighted in the proposed rule.

As discussed in the proposed rule, we officially notified the Council on May 30, 2012, that the GOM haddock stock is subject to overfishing and is approaching an overfished condition, based on results from an operational stock assessment. As the GOM haddock ACL and corresponding sector ACEs are reduced, GOM haddock will likely become a limiting stock, and an exemption that encourages targeting of such a limiting stock is not justifiable. Therefore, we disapprove this exemption for FY 2013.

*New Exemption Request That Is Disapproved for FY 2013*

Sectors submitted an exemption request from the prohibition on combining small-mesh exempted fishery and sector trips for FY 2013. Due to monitoring and enforcement concerns, we are disapproving this exemption. A detailed description of this exemption is included below:

25. Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips

We reduced minimum mesh size restrictions for the GOM, GB, and SNE regulated mesh areas (RMAs) (§ 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i)) under Amendment 13 (69 FR 22906, 4/27/04) and FW 42, to reduce overall mortality on groundfish stocks, change the selection pattern of the fishery to target larger fish, improve survival of sublegal fish, and allow sublegal fish more opportunity to spawn before entering the fishery. FW 42 set requirements for trawl codends in the SNE RMA to be made of either square or diamond mesh no smaller than 6.5 inches (16.5 cm), in an effort to reduce discards of yellowtail flounder and increase the rate of yellowtail flounder rebuilding.

Approved large and small-mesh exempted fisheries, as described in the regulations, allow a vessel to fish for particular non-regulated NE multispecies, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the NE multispecies minimum mesh size allowed in each RMA. To approve an exempted fishery, after consultation with the Council, we must determine the level of bycatch of regulated NE multispecies (i.e., the regulatory standard requires that bycatch of regulated species must be less than 5 percent, by weight, of total catch), and that the exempted fishery will not jeopardize fishery mortality objectives, solicit comment, and publish implementing rulemaking. Exempted fishery regulations allow vessels to fish with small mesh, but prohibit the retention of regulated NE multispecies.

Sectors requested an exemption that would allow their vessels to possess and use both small mesh in an exempted fishery, and large mesh as they normally would on a standard sector trip, on the same fishing trip for the following small-mesh exemption areas: The Cultivator Shoal Whiting Fishery Exemption Area, the SNE Exemption Area, and the MA Exemption Area. The goal was to allow a vessel to engage in exempted fisheries while on a sector trip and to increase efficiency of time at sea and gross revenue per trip while decreasing vessel-operating costs. Sectors stated that they would only utilize this exemption when either a NEFOP observer or an at-sea monitor is aboard the vessel. The sectors proposed to count any allocated NE multispecies caught on these combined trips against the sector's allocation. We received numerous comments in support of this exemption from industry, sectors, and ME DMR.

We raised several concerns with this exemption in the proposed rule, including concerns about potential monitoring requirements, discussed previously under Exemption 22. We expressed concern that, through this exemption, a vessel could circumvent the regulations and target allocated NE multispecies with small mesh, and therefore increase catch of juvenile fish, negatively affecting fish stocks. Currently, large and small-mesh exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, and do not receive ASM coverage. Because exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, only a subset of NEFOP observers receive training for these small mesh fisheries, which is further discussed in the response to Comment 45. Therefore, the vast majority of NEFOP observers and at-sea monitors do not receive the training necessary to accurately observe the small-mesh portion of these trips as proposed, and we are concerned about accurately monitoring both portions of these proposed trips. In addition, we have some concern that observers and at-sea monitors could be viewed as taking on an enforcement role when monitoring these trips as proposed. The U.S. Coast Guard expressed concern that approval of this exemption would render minimum fish and mesh sizes unenforceable. Several environmental groups and one sector echoed our concern for potential impacts to juvenile fish. Given these concerns, we are disapproving an exemption from the prohibition on combining small-mesh exempted fishery and sector trips for FY 2013.

*Exemptions That Are Disapproved for FY 2013 Due to Separate Rulemaking (26–30)*

Amendment 16 prohibited sectors from requesting access to year-round closed areas. To increase operational flexibility for vessels participating in sectors as mitigation for reduced ACLs, FW 48 proposes allowing a sector to request access to year-round mortality closure areas through its sector operations plan. Sectors would not be allowed to request access to areas that are closed to protect EFH.

In their FY 2013 operations plans, sectors have requested exemptions for access to the following five year round CAs: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; and (30) year-round access to the Nantucket Lightship Closed Area. Consideration of these requests is contingent upon approval of the FW 48 measure allowing sectors to request access to year-round closed areas. Also, because additional analysis is needed, and this analysis would likely delay the approval of sector operations plans and allocations beyond May 1, 2013, we are disapproving all exemption requests for access to year-round mortality CAs through this rule. We intend to consider these exemption requests for access to year-round mortality closed areas in a separate action, and anticipate implementation of that action early in FY 2013.

*Requested Exemptions Are Disapproved Because They Are Prohibited*

We are disapproving, and did not analyze in the EA, the following five exemption requests, because they are prohibited or not authorized by the NE multispecies regulations: (31) ASM requirements; (32) ASM requirements for vessels using jig gear; (33) ASM requirements for handgear vessels; (34) year-round access to the Eastern U.S./Canada Area for trawl vessels; and (35) the prohibition on a vessel hauling another vessel's trap gear.

Sectors may not be exempted from permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements and DSM requirements). In a letter dated September 1, 2010, we notified the Council that we interpret the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), we also requested that the Council define which reporting requirements sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM. Therefore, we did not consider requests for exemptions from ASM.

We are disapproving two additional FY 2013 exemption requests (year-round access to the Eastern U.S./Canada Area for trawl vessels and the prohibition on a vessel hauling another vessel's trap gear) because they fall outside the authorization for exemptions provided in the NE multispecies regulations. The Regional Administrator may impose restrictions or in-season adjustments on a vessel

fishing in the Eastern U.S./Canada Area, consistent with the Administrative Procedure Act (APA), including: Gear restrictions; modification of access to the area or the number of trips in the area; or closure of the area to prevent over-harvesting or to facilitate achieving a quota. Since this discretion is left to the Regional Administrator, this request will be considered when determining access to the Eastern U.S./Canada Area, but cannot be considered under the exemption process. Also, a request for an exemption from tagging requirements for trap gear is disapproved because the tagging requirement regulations are not included in the NE multispecies regulations. Vessels holding an American lobster permit are bound by the American lobster tagging requirements.

*Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided*

We are disapproving the following four exemption requests because they were previously rejected, and the requesting sectors provided no new information that would change our previous decision: (36) Minimum hook size for demersal longline; (37) access to the April GOM Rolling Closure (Blocks 124 and 132); (38) access to the May GOM Rolling Closure (Block 138); and (39) all DSM requirements. We did not analyze these exemptions in the FY 2013 sector EA because no new information was available to change the analyses previously published in past EAs. Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rule for FY 2012 (77 FR 8780, February 15, 2012; and 77 FR 26129, May 2, 2012, respectively), and its accompanying EA (as well as previous years' rules and EAs).

**Additional Sector Provisions**

A sector may also include additional provisions in its operations plan, including additional requirements for or restrictions of fishing practices. A detailed description of these provisions is included below:

*Provisions To Fish Without ACE*

Under regulations at § 648.87(b)(2)(xiv), a sector may propose a program that would allow fishing on a sector trip in fisheries that are known to have a bycatch of NE multispecies when it does not have ACE for certain NE multispecies stocks, if the sector can show that the limiting NE multispecies stock(s) will be avoided. The regulations currently restrict this provision to participation in other fisheries (e.g., dogfish, monkfish, and skate) that have a bycatch of groundfish that would count against the sector's ACE. We had intended to make a correction to this regulation to make it consistent with Section 4.2.3.4 (Mortality/Conservation Controls) of Amendment 16, which would allow a sector to request authorization to target allocated NE multispecies under this provision in FY 2013. That section of Amendment 16 specified that a sector operations plan should detail ''. . . a plan for operations or stopping once the ACEs of one or more species are taken.'' That paragraph concluded by stating, ''The plan must provide assurance that the sector would not exceed the ACEs allocated to it (either through landings or discards).'' Knowing that we intended to make this correction, sectors submitted requests to target allocated NE multispecies stocks. However, based on a review of Amendment 16, we believe that additional impacts analysis may be necessary, and intend to make this correction in a future action for FY 2014.

Prior to developing requests to fish with no ACE for a particular stock, we provided sectors with guidance that they must provide specific operational requirements (location, time, and gear), the species or stocks they intend to target, and demonstrate zero catch of any stock for which they do not have ACE (''limiting stock'') using their observer and ASM data from FY 2011. We received multiple requests from the GB Cod Fixed Gear Sector and NEFS 5 to fish under this provision.

We reviewed both vessel trip report (VTR) and observer/ASM data from FYs 2010 and 2011 for all requests to fish without ACE. These data indicated that very few sector trips from FYs 2010 and 2011 met the Amendment 16 standard of zero catch of the limiting stock outlined in the guidance we issued to sectors. However, the data for several of the requests indicate that catch of the limiting stock was less than 1 percent of the total catch. We proposed the provision that sectors could fish without ACE when targeting other species of which they have caught less than1 percent, provided the sector adheres to certain criteria. Unlike approved exemptions, which may be granted to any interested sector, these provisions to fish without ACE are sector-specific, and therefore are only approved for the sectors as shown in Table 4.

TABLE 4—REQUESTS TO FISH WITHOUT ACE PROPOSED FOR APPROVAL

| Sector | Limiting stock | Stat area | Gear | Target stock | Time period |
|---|---|---|---|---|---|
| GB Cod Fixed Gear Sector | All ACE Stocks | 526 | Extra Large Mesh Gillnet | Monkfish, Dogfish, Winter Skate. | Year Round. |
| | | 537 | Extra Large Mesh Gillnet | Monkfish | May–March. |
| | | | | Winter Skate | Year Round. |
| | | | Large Mesh Gillnet | Winter Skate | Year Round. |
| NEFS 5 | GB West Cod | 611 | Standard Otter Trawl | Summer Flounder | Oct–April |
| | | 613 | | Summer Flounder, Monkfish. | |

For this provision, NEFS 5 proposed to require its participating vessels to submit trip start and trip end hails to the sector manager. If an NEFS 5 vessel encounters a limiting stock, the sector proposes requiring the vessel to land any amount of that limiting stock of legal sized fish, and prevent that vessel from taking a subsequent fishing trip until that specific ACE is accounted for through a transfer. Under this proposal, the NEFS 5 may charge the member additional fees for encountering the limiting stock. These sector requirements are approved for NEFS 5, as described, provided the sector meets additional requirements detailed below.

To aid in identifying these trips, a vessel in NEFS 5 and the Fixed Gear Sector that intends to use this provision on a sector trip is required to submit through its VMS a trip start hail with ''A2'' entered in the free text field to

identify the trip as one that will fish in an approved program to fish with no ACE for a given stock. This hail report will help us, as well as the sector manager, to identify a trip fishing under these provisions for monitoring purposes. Either sector may also require its participating vessels to submit a trip end hail, as detailed in the operations plan.

We proposed and are approving these provisions with the flexibility for the sectors to catch a *de minimis* amount of the limiting stock (up to 100 lb (45.4 kg)). The sector will be required to account for any amount of the limiting stock that is caught, and therefore would need to transfer-in additional ACE by the end of the FY to cover such an overage. Once a sector reaches the *de minimis* threshold of 100 lb (45.4 kg), the sector may transfer-in additional ACE and resume normal fishing activity, but may not attempt to fish under this provision for the remainder of the FY.

We are concerned about approving a provision to allow a sector to fish without ACE. We believe that 100-percent ASM coverage is necessary for accurate monitoring, given the very low 2013 quotas for some of the stocks. In addition, all sector trips that currently are not assigned an observer or monitor receive a calculated discard rate based on the total catch from that trip and actual discards from monitored trips in the same area with the same gear based on trips that were monitored. We cannot apply a calculated discard rate for the limiting stock or the sector could automatically exceed its ACE for the limiting stock on every trip. Requiring 100-percent monitoring ensures that the trip will have complete and accurate discard information. Therefore, we are approving this provision, provided an industry-funded monitor is deployed on 100 percent of these trips. Additional information on the requirements for 100-percent industry-funded monitoring programs for this provision is provided below under Additional Industry-Funded ASM.

*Inshore GOM Restrictions*

Several sectors (with the exception of the Northeast Coastal Communities Sector, NEFS 4, Port Clyde Community Groundfish Sector, and the Tri-State Sector) proposed a provision to limit and more accurately document a vessel's behavior when fishing in a part of the GOM Broad Stock Area (BSA) in what they consider to be the inshore portion of the GOM BSA, or the area to the west of 70°15′ W. long. We approve this provision, but note that a sector may elect to remove this provision in the final version of its operations plan. A trip that is carrying an observer or at-sea monitor remains free to fish in all areas, including the inshore GOM without restriction. As approved under the Inshore GOM Restriction provision, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip in the GOM west of 70°15′ W. long., the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip outside the GOM BSA, this provision prohibits the vessel from fishing west of 70°15′ W. long. in the GOM BSA. The approved provision includes a requirement for a vessel to declare whether or not it intends to fish in the inshore GOM area through the trip start hail. A vessel intending to utilize this provision on a sector trip is required to enter ''M3'' in the free text field of the trip start hail through VMS to identify the trip. This hail report will help the sector manager identify a trip fishing under this provision for monitoring purposes. We are providing sector managers with the ability to monitor this provision through the Sector Information Management Module (SIMM), a Web site where we currently provide roster, trip, discard, and observer information to sector managers. A sector vessel may use a federally funded NEFOP observer or at-sea monitor on these trips because we do not believe it will create bias in coverage or discard estimates, as fishing behavior is not expected to change as a result of this provision.

*Additional Industry-Funded ASM*

We are approving several exemptions that will require 100-percent ASM coverage funded by the industry. However, we are currently looking into possible ways to provide funding for these trips. Should funding be secured, we will alert the public of this and explain how money would be dispersed.

For any trip for which sectors are required to pay for a monitor, sectors will only be required to pay for the at-sea portion of the costs. Sectors will not be responsible to pay for data processing, monitoring gear, or training. Sectors may contract directly with any of the four monitoring providers approved to provide ASM services (A.I.S., Inc.; Atlantic Catch Data, Ltd.; East West Technical Services, LLC; and MRAG Americas) for any of the required exemptions or provisions.

Any sector interested in using an exemption requiring industry-funded ASM will be required to develop and submit a monitoring plan as part of its operation plan for approval by NMFS. Industry-funded ASM proposals should detail call-in procedures to the provider (timing, method, and information needed), selection protocols used to ensure that ASM coverage on standard sector trips will not be impacted, mandatory coverage requirements, refusal procedures, safety requirements, and trip start hail requirements. Many of these procedures will remain consistent with the guidance developed for an industry-funded monitoring program summarized in: *http://www.nero.noaa.gov/sfd/sectordocs/SectorOpsEAGuideFY2013.pdf.* If we determine the plan is sufficient, we will approve it along with the rest of the sector's operations plan. For FY 2013, any approved monitoring program will be included as an amendment to the sector's operations plan.

The proposed rule highlighted several concerns regarding impacts of 100-percent industry-funded monitoring to the reliability of and potential bias of discard estimates, our ability to achieve adequate NEFOP and ASM coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. Given these concerns, we will monitor the impacts of these exemptions, compliance with catch thresholds and other exemption requirements, as well as the associated industry-funded monitoring on stocks and required monitoring programs. Approved exemptions include a requirement for a vessel to declare whether or not it intends to use certain exemptions through the trip start hail. This hail report will help us, and the sector manager, identify a trip fishing under these exemptions for monitoring purposes. If necessary to mitigate negative impacts, we will revoke these exemptions during the FY after notifying sectors and the public, consistent with APA requirements.

**Withdrawing a Sector Exemption In-Season**

Previously, we have retained the right to revoke several exemptions in-season if a sector is not meeting certain requirements. To date, we have not used this authority, but include a procedure to revoke an exemption, if necessary, in this rulemaking. A sector exemption may be revoked, however, if we determine that it jeopardizes management measures, objectives, or rebuilding efforts; results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources; causes enforcement concerns; or if catch from trips utilizing the exemption cannot properly be monitored. At that time, consistent with APA

requirements, we will weigh the need to revoke the exemption as quickly as possible to prevent conservation or management objectives from being undermined, with the necessity or practicability of, or public interest in, a delay to receive comments.

**Comments and Responses**

Thirty-seven letters, each containing several comments, were submitted by several entities: Associated Fisheries of Maine, the Conservation Law Foundation (CLF), Oceana, Earthjustice, the Maine Division of Marine Resources (ME DMR), the Maine Coast Community Sector (MCCS), the Maine Coast Fishermen's Association (MCFA), the Massachusetts Division of Marine Fisheries (MA DMF), the New England Fishery Management Council (Council), Northeast Fishery Sector 5, the Northeast Seafood Coalition (NSC), the Northeast Sector Service Network (NESSN), the Pew Charitable Trusts (Pew), the Portland Fish Exchange, the Seacoast Science Center, the U.S. Coast Guard, the Union of Concerned Scientists and numerous individuals. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are responded to below.

*General Sector Issues*

*Comment 1:* The Portland Fish Exchange raised concern about the sectors, noting that they were promoted to increase stock abundance and ex-vessel prices, and that sectors have not been successful in accomplishing either.

*Response:* Since sectors were introduced to the NE multispecies FMP in Amendment 13, numerous stocks previously experiencing overfishing or that were overfished are no longer experiencing overfishing, nor are they overfished, including: SNE/MA yellowtail flounder, GB winter flounder, SNE winter flounder, white hake, and pollock. GOM winter flounder is no longer subject to overfishing. In addition, the biomass of CC/GOM Yellowtail Flounder, SNE/MA yellowtail flounder, GB winter flounder, SNE winter flounder, redfish, white hake, and Pollock have increased, though some to a minimal extent. At the conclusion of FYs 2010 and 2011, we evaluated the performance of both sectors and the common pool. The 2011 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2011-April 2012) (*http://www.nefsc.noaa.gov/publications/crd/crd1230/crd1230.pdf*) indicates that while landings have decreased from 69,774,688 lb (31,649,266 kg) to 61,721,659 lbs (27,996,474 kg), the average price per pound of NE multispecies increased from $1.21/lb in 2009 to $1.46/lb in 2011.

*Comment 2:* The MCCS commented that the proposed rule incorrectly named the sector as the ''Maine Coast Community Groundfish Sector'' instead of the Maine Coast Community Sector.

*Response:* Based on the comment received, we have corrected the name in this final rule.

*Comment 3:* MA DMF commented that we have approved sectors to operate as a de facto IFQ by allowing all sectors to assign each member the ACE that it brings to a sector. MA DMF also commented that it is unrealistic to expect sector vessels to consolidate operations onto fewer vessels.

*Response:* Amendment 16, developed by the Council and approved by NMFS, allows each sector to determine which vessels will actively fish and how best to harvest its allocation, including decisions regarding consolidation. Amendment 16 did not place restrictions on a sector's decision of how to allocate ACE to its members. Thus, each sector is free to determine how ACE will be assigned to its member vessels. For FY 2013, all sectors have elected to assign each member the ACE that it brings to a sector. The sector's allocation of ACE is not considered an IFQ since it is not a permanent allocation. A sector's ACE is a temporary, 1 yr amount of fish allocated to that sector based on the collective fishing history of the sector's members.

*ASM Coverage Level for FY 2013*

*Comment 4:* The Portland Fish Exchange contends that observer coverage should be provided by NMFS.

*Response:* Amendment 16, enacted in 2010, required that sectors develop an adequate industry-funded ASM program, beginning in FY 2012. Implementation of this requirement was intended to be phased in so that sectors would have time to develop monitoring systems, locate qualified vendors, and have their programs approved by NMFS (Amendment 16). During FYs 2010 and 2011, we implemented a federally-funded ASM program to collect the data required that would be sufficient to reliably estimate discards for ACEs and ACLs. In FY 2012, we again committed to paying for ASM in FY 2012 to help mitigate overall costs and negative impacts to the industry due to lower catch limits and informed the industry that it may not be possible for NMFS to continue funding the ASM program. Given the very low catch limits for FY 2013, in March 2012, we announced that we would pay for the required 14-percent level of ASM in FY 2013. NMFS has provided funding since the implementation of Amendment 16. However, we cannot guarantee that we will continue funding in future years, nor are we required to do so.

*Comment 5:* CLF, PEW, MA DMF, MCFA, and Oceana all submitted comments asserting that the proposed level of ASM for FY 2013 is too low for the reasons that follow. PEW and CLF commented that higher levels of observer coverage are essential to the future of this fishery and, that, although the proposed coverage may be sufficient to estimate discard rates on the observed trips, this level would not be adequate for quota management and assessment science. MA DMF broadly commented that catch share programs cannot be justified with such low coverage. MCFA highlighted that the proposed coverage rate may be sufficient for monitoring discards, but that higher coverage rates ensure all fishermen are held to the same standards of compliance with regulations. Oceana commented that the 30-percent CV is an inappropriate standard for ASM monitoring and that the proposed ASM coverage rate was insufficient to support ACE-level accountability measures (AM). Oceana also asserted that ACE-based AMs (sectors must cease fishing when an ACE is fully harvested) are the only AMs for allocated stocks, therefore requiring higher levels of ASM coverage. Oceana expressed concern that the 30 percent CV, when applied to catch, resulted in a range of estimates that could allow a sector to continue to fish after its ACE was exhausted.

*Response:* We have determined that 22 percent at-sea monitoring/observer coverage of sector trips is sufficient, to the extent practicable in light of Magnuson-Stevens Act requirements; to reliably estimate catch for purposes of monitoring sector ACEs and ACLs for groundfish stocks. This determination is based not only on the statistical sufficiency of the level of coverage as summarized in more detail at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf,* but also on the totality of how data and information is collected and analyzed including obligations on sectors to self-monitor and self-report which is linked to agency monitoring. For the most part, these commenters have generally asserted that this system and level of monitoring is not adequate without providing any specific justification or information to support their assertion.

Amendment 16 specified that ASM coverage levels should be less than 100 percent, which requires that the discard

portion of catch, and thus total catch, be an estimate. The level of observer coverage, ultimately, should provide confidence that the overall catch estimate is accurate enough to ensure that sector fishing activities are consistent with National Standard 1 requirements to prevent overfishing while achieving on a continuing basis optimum yield from each fishery. To that end, significant additional uncertainty buffers are established in the setting of ACLs that help make up for any lack of absolute precision and accuracy in estimating overall catch by sector vessels.

We rely on a number of data sources to monitor groundfish catch: Sector vessels are required to have an operational Vessel Monitoring System (VMS) and must use VMS to notify us when they are taking a groundfish trip; vessels must also submit vessel logbook reports (VTR), which are used to determine catch (landings and discards), gear and fishing area; depending upon their fishing activity, some vessels are also required to submit daily VMS catch reports to further refine catch by fishing area; dealers are required to report all purchases from groundfish vessels, which are used to determine landings; and sectors are required to submit sub-trip level catch and gear information weekly, or daily when certain catch thresholds (for FY 2013 the daily reporting threshold is 90 percent of any ACE) are reached. The detailed discard information provided by at-sea observers is critical for determining total catch (pounds, gear used, stock area). We conduct weekly reconciliation with sector-reported data, verifying that each sector and the agency have the same set of data to monitor catch and sector ACEs.

The Sector Manager Report submitted to us comprises three separate reports. The Sector Manager Detail Report provides information about each fishing trip down to the stock area. The Sector Manager Trip Issue Report provides information about any enforcement or reporting compliance issues that arose during the fishing week. The ACE Status Report provides the means for sector managers to report their ACE status calculations. This allows us to cross-check totals, as stipulated in Amendment 16. The Daily ACE Status Report provides the means for sector managers to report their ACE status calculations on a daily basis if a threshold has been reached in the current fishing year. Sector reports and reconciliation have led to the highest level of VTR compliance ever recorded in the Northeast multispecies fishery. It is in the best interest of each sector to accurately report the required information not only to foster effective ACE monitoring, but because sector members may be held jointly and severally liable for violations. Sectors have demonstrated their willingness to self-report enforcement or reporting compliance issues (10 incidents reported in FY 2010, 18 in FY 2011) and have established mechanisms for investigating, adjudicating, and punishing member violations in addition to enforcement actions that may be taken by us.

Oceana specifically expressed concern that the 30 percent CV, when applied to catch, resulted in a range of estimates that could allow a sector to continue to fish after its ACE was exhausted. However, the 30 percent CV standard is not applied to catch, it is applied to discard estimates. Catch is the sum of landings and discards, and landings are derived from dealer purchase reports. The CV analysis is conducted to evaluate the calculation of discards, which are typically less than 10 percent of the overall catch of the allocated groundfish stocks, and in FY 2011 were less than 5 percent of the catch for most allocated stocks (while discards were a higher percentage of total catch for GOM yellowtail flounder, GB East cod, and American plaice, the total catch of those stocks were less than 90 percent of the sub-ACLs and the CVs for those stocks ranged from 4.4 to 15.4). The discard calculations include actual discard poundage reported by at-sea observers, and discards estimated by applying the stratum discard rate to the pounds kept on an unobserved trip. NOAA Fisheries has further examined the 256 sector ACE level catch figures (16 fishing sectors *16 ACE allocations) in comparison to the CV30 standard for FY 2011. This examination reveals that for 207 of the 256 ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent was less than 1 percent. For 43 of the remaining ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent ranged from 1–9.9 percent. There were 6 ACE allocations for which the percent of discard pounds with a CV greater than 30 percent ranged from 10–66 percent. Based on this analysis, we conclude that we the monitoring program for sector ACE allocations is reliable.

Our Fisheries Sampling Branch (FSB) at the NEFSC collects, maintains, and distributes data from fishing trips that carry at-sea observers. FSB manages two separate but related programs: The NEFOP and the ASM program. Although each program is tailored to meet specific monitoring objectives, the programs function similarly. Priorities for the NEFOP observer program are determined by national priorities (e.g., endangered or protected species), fishery management priorities, and scientific priorities related to stock assessments. NEFOP observers collect the same fishing vessel catch information, but with an additional focus on biological sampling of catch, including any incidental take of a marine mammal, seabird, or sea turtle. The NEFOP program's resources are finite, and the allocation of NEFOP coverage to fishing trips is guided by program priorities that include those determined by using a SBRM that identifies relative fleet contribution to discards. The ASM program was implemented in FY 2010 to support the NE multispecies sector management program, and collects data to verify fishing vessel catch (landings and discards), by species, gear type and area, for the purpose of monitoring sector catch.

In developing Amendment 16, the Council anticipated that NEFOP might not have sufficient resources to fund sector catch monitoring, so Amendment 16 specified that starting in FY 2012 sectors would be required to develop an industry-funded ASM program to monitor sector catch. The NEFOP program provides at-sea observers, and the coverage provided to sectors by that program partially satisfies the sector-specific ASM provision. Collectively, the at-sea coverage provided by the ASM and NEFOP programs is providing more data for quota management and assessment science than was available to NMFS prior to implementation of Amendment 16.

The agency has determined the level of monitoring coverage that is necessary to accurately monitor sector operations in the context of the national standards and other requirements of the MSA. We have determined that the appropriate level of observer coverage should be set at the level that meets the 30-percent CV requirement (at a minimum) at the overall stock level for all sectors and gears combined, to reliably estimate catch for purposes of monitoring ACEs and ACLs. This level of coverage minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to monitor annual catch levels.

This interpretation is justified in light of the requirement for conservation and management measures to be consistent with all national standards. Specifically, National Standards 2, 7, and 8, which speak, respectively, to the need to use the best scientific information available; the need to minimize costs and avoid

unnecessary duplication, where practicable; and the need to take into account impacts on fishing communities and minimize adverse economic impacts, to the extent practicable. We have conducted analyses, and considered both precision and accuracy issues in determining the appropriate level of coverage that minimizes the cost burden to sectors and NMFS, while still providing a reliable estimate of overall catch. As stated previously, we have published a more detailed summary of the supporting analyses, and an explanation and justification supporting our determination that an at-sea coverage rate of 22 percent (14 percent ASM + 8 percent NEFOP). Summary tables of the data used in the analyses were also posted on our Web site. A table of information by stock, gear, and sector was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata2.html.* A table of information that can be sorted by stock and gear (without sector affiliation) was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata.html.*

Oceana's claim that ACE-level AMs are the only AMs that apply to allocated stocks is inaccurate. Amendment 16 included many AMs for various portions of the groundfish fishery, including specific AMs to address the possibility that sector catches might at some point exceed their ACEs. Among the AM's instituted for sectors are: (1) Catch allocated to each sector is based on the stock ACL established by the Council. The ACL takes into account biological and management uncertainty to reduce the risk of overfishing. (2) Sectors are required to stop groundfish fishing when they are projected to have caught their allocation for any groundfish stock. (3) Reporting requirements are implemented to ensure that monitoring of sector catches is timely and accurate. (4) Sectors are provided opportunities to balance catches with their allocation through the trading of ACEs between sectors. (5) If a sector exceeds its allocation in a given year, and cannot balance its catch and allocation through ACE trading, then its allocation in the following year is reduced by the overage.

Sector ACEs are only one of several sub-allocations of each allocated stock's ACL. In addition to the sector-specific AMs, there are additional AMs that apply to each allocated stock's ACL and AMs that apply to other sub-ACLs and sub-components of each stock. A ''hard TAC'' backstop was adopted for the common pool, under which the fishery would be suspended upon reaching the year's sub-ACL for a stock. For the recreational fishery, AMs include adjustments to seasons, adjustments to minimum fish sizes, or adjustments to bag limits. Amendment 16 specifically contemplated the roles of AMs at the ACL, sub-ACL, and sub-component level, noting that with more than one sub-component, and with ACLs set lower than the ABC (due to scientific and management buffers), it is possible that an overage by one component and not the others may not lead to a depressed stock size that requires adjusting ACLs. Accordingly, it sets up an entire process of evaluating any ACL overage to determine if an AM is necessary or sufficient to account for the overage and the current biological condition of the stock. This exists above and beyond the AMs set for sectors which are designed to engender responsibility and accountability in the sector system. The overall context is to allow adjustments (AMs) at the sub-component level so that components not responsible for any overage at the ACL level are not subject to reductions in their sub-ACL and resultant changes in fishing opportunities.

Oceana's concern about monitoring at the ACE level needs to be distinguished from the determination of ASM coverage requirements. The sector monitoring program described previously provides reliable information for ACE monitoring.

*Comment 6:* MA DMF urged that we base ASM coverage rates on a non-random stratification of the fleet based on sub-allocations made available to individual fishermen by their sectors and the fishing power of individual fishing vessels. MA DMF contended this is a necessary measure to counter the impact of not having a high ASM coverage rate.

*Response:* ASM selections are made randomly to achieve the target coverage rate we have determined will meet the CV standard and effectively monitor catch at the ACL level. The pre-trip notification system (PTNS) used by NEFOP to make coverage selections does not stratify trips, but makes random selections for monitor assignment for each sector. Random selection is used because sector behavior and allocations can change at any time during a fishing year. The CV measures the precision of the calculated discards, and varies depending on the consistency of individual trip activity in comparison to the average trip activity within a stratum (i.e., sector, area fished, and gear type used). For example, all trips by members of Northeast Fishery Sector III in statistical area 521 using 6.5-inch sink gillnets are in the same stratum. This is consistent with the Council's proposed Framework 48, which specifies that the CV should be applied at the stock level.

Establishing individual ASM coverage rates for each sector vessel would greatly complicate the deployment of observers on appropriate trips. As described in more detail in Appendix A at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf,* all at-sea coverage selections are made by NEFOP to ensure that trip selection is random within a sector, and that the ASM coverage is integrated into overall coverage level needs. Requiring the ASM selection process to achieve different coverage rates for each individual vessel is not practical. It would add a substantial amount of complexity to the program, and establishing such a complex system would require substantial program changes with associated costs, but likely only marginal improvement in our estimation of catch at the ACL level. For example, for this approach to work, it would require coverage allocations to be specified for each vessel as a starting point for distributing coverage. This approach would also require that individual vessels be limited to fishing specified allocations in order to allow for ASM selection based on the allocation. Without fixed allocations to vessels, it would be impossible to base an individual vessel's coverage rate on the vessel's available sub-allocation from the sector because ACE leasing between sectors and share trading among a sector's vessels occur throughout the year. This approach would require fundamental modifications to the more flexible system in place. These modifications would be inconsistent with the sector system modified by Amendment 16 and beyond the scope of this action. The sampling strata would have to be based on knowledge of each sector's allotment of catch to individual vessels, and would establish a monitoring program based on landing capacity. This would require ASM levels to be specified after the sector membership rosters are final, and after the sector operating plans are approved. Such an approach would have to assume that the relative performance level of each individual vessel remained constant provided the vessel remained in a specified sector. Such a program would represent a major change to the current sector program, and could not be accomplished at this time.

*Comment 7:* The Council commented in support of using a stock-specific CV rate across all sectors (i.e., at the stock level rather than the ACE level) as

proposed in FW 48. The application of the CV rate across sectors is explained in more detail in the response to comment 8.

*Response:* We agree that the correct standard for determining precision of catch estimates from ASM is at the stock level.

*Comment 8:* The Council expressed concern that the 22-percent coverage rate for FY 2013 is based on achieving the 30-percent CV for GB winter flounder, and that the coverage rate is therefore 10 percentage points higher than necessary to achieve the CV standard for all other stocks. The Council commented that there are several sectors with little to no catch of GB winter flounder, which made that stock inappropriate as the basis for determining those sectors' coverage rate.

*Response:* The required coverage rate is set for each year based on analyses using the most recent available data. We have interpreted the requirement to accurately monitor sector operations in the context of the national standards and other requirements of the MSA, as explained in the response to Comment 5. We have, determined that the appropriate level of observer coverage should be set at the level that meets the CV requirement at the overall stock level, and also minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to effectively monitor annual catch levels. GB winter flounder is the stock that has the highest variability based on FY 2011 catch. However, in FY 2010, a review of the data indicated (see Table 1A in Summary document) that GB winter flounder would have required a coverage level of 9 percent to achieve a CV of 30. Given only two fishing years of data to determine the level of ASM coverage, NMFS concludes it is premature to assume these values are determinative. Instead, data was used as an indication that variability is likely to be high for GB winter flounder or some other stock(s). A coverage rate of 22 percent of trips is intended to account for this variability in the fishery and ensure that GB winter flounder (as well as all other stocks) meets the CV standard.

*Comment 9:* CLF and PEW commented that illegal discarding and use of small mesh are well known in New England. Oceana commented that they agree with the statements by the Council's NE multispecies Plan Development Team that low ACLs increase incentives to illegally discard fish, potentially resulting in long-term effects to the fishery larger than the cost of adequate ASM.

*Response:* There is no evidence to support the assertion that illegal discarding and use of small mesh are currently widespread in the groundfish fishery. Both practices have been documented by sectors and the enforcement agents, but we believe that they are not the norm, due, in large part, to the requirements of the sector system and to the efforts of enforcement agents. The Sector Manager Report submitted to us comprises three separate reports, including the Sector Manager Trip Issue Report that provides information about any enforcement or reporting compliance issues that arose during the fishing week. It is in the best interest of each sector to accurately report the required information not only to foster effective ACE monitoring, but because sector members may be held jointly and severally liable for violations. Sectors have demonstrated their willingness to self-report enforcement or reporting compliance issues (10 incidents reported in FY 2010, 18 in FY 2011, including discarding violations) and have established mechanisms for investigating, adjudicating, and punishing member violations in addition to enforcement action taken by us.

*ASM Costs*

*Comment 10:* The Council commented that we should compromise between administering an uncomplicated program for ASM selection and reducing industry-wide ASM costs. MA DMF commented that balancing monitoring levels with costs was a conundrum and stated that industry cannot afford to pay for monitoring due to low quotas going into effect. CLF and Pew stated that monitoring should be accepted as a cost of doing business for those fishing on a public resource. The Council commented that setting the coverage rate based on meeting the CV standard for GB winter flounder removes any incentive for sectors to reduce the variability of their discards to reduce observer costs because it would not necessarily impact their future coverage rates. The Council suggested a compromise approach using one coverage rate for sectors catching substantial amounts of GB winter flounder and a different coverage rate for other sectors.

*Response:* We agree that, under Magnuson-Stevens Act requirements, we must balance administration of the ASM program and reducing overall costs and that the level of ASM coverage adopted for this year in combination with the overall sector program requirements does just that. Regulations specify that ASM costs are the responsibility of sectors, beginning in FY 2012. We interpret this to mean that sectors will be responsible to pay for the at-sea portions of the ASM costs. For FY 2012, we secured funding to pay for all ASM costs. Because of the Secretary's disaster declaration in the groundfish fishery we committed to covering these costs again in FY 2013, knowing that it would be difficult for the industry to pay those costs due to the low quotas set for many of the NE multispecies stocks. As stated in Comment 5, we have determined that the appropriate level of observer coverage should be set at the level that meets the CV requirement at the overall stock level, and also minimizes the cost burden, while still providing a reliable estimate of overall catch by sectors to monitor annual catch levels. The response also notes that, given only two years of data, NMFS does not view the FY 2011 variability of GB winter flounder as predictive, and believes it would be inappropriate to tailor the coverage requirements to address that one data point, rather than the fishery as a whole. As more data and information become available each year, we can further hone the appropriate level of ASM coverage that best balances the cost and need of such coverage.

*Comment 11:* CLF and Pew suggested that electronic monitoring (EM) and full retention of fish could provide more complete information on mortality and bycatch while reducing industry costs.

*Response:* Along with other monitoring systems such as observers, at-sea monitors, vessel trip reports, biological sampling and dealer reports, electronic monitoring (EM) technologies hold promise as additional data collection tools. When supplemented by other data collection methods, accountability practices, business rules, and on-board practices, EM may be an important means of supporting full catch accounting. We encourage and endorse the use of EM, where and when appropriate, in the Northeast Region. Currently, we are in the third phase of a pilot study researching the possible role of EM in the Northeast groundfish fishery. As we develop and implement EM for monitoring fisheries in the Northeast, we have identified two models that hold promise for effective use in Northeast fisheries: 1. Full retention of catch with EM used to ensure compliance, and 2. EM as a means of validation of the vessel trip report discard data in place of using calculated discards.

The Council would need to assess the practical and biological issues associated with this and may need to revise its fishery management plan. It is

important to note that requiring vessels to retain all fish would require full consideration of a number of issues related to the retention of non-groundfish species, and related to the monitoring and disposition of fish landed under such a program. It is also unknown at this point whether EM would be more cost effective than monitors.

*Comment 12:* In their comments Oceana made a number of requests for action to address their concerns about the ASM coverage level for FY 2013 and the process for determining the appropriate level. Their requests were that we:

1. Disclose the data required to be published under ASM settlement agreement.
2. Have the Council's Scientific and Statistical Committee (SSC) review the observer coverage analyses.
3. Extend the comment period until the data are disclosed and SSC review is published.
4. Analyze how much coverage is necessary to meet the 30-percent CV for every ACE.
5. Analyze how much discard rates would need to increase on unobserved trips to exceed an ACE.
6. Analyze how much discard rates would need to increase on unobserved trips to avoid exceeding an ACL with a 0-percent probability of an overage.
7. Repropose ASM coverage rates based on the requested analyses.

*Response:* Our response to comment 5 refers to summary tables that were included in the ''Summary of Analyses Conducted to determine at-Sea Monitoring Requirements for Multispecies Sectors FY 2013.'' The initial summary tables were posted on March 13, 2013, and additional summary tables were posted on April 12, 2013, and included the data used in the analyses, as agreed in the settlement agreement between Oceana and NMFS. A table of information by stock, gear, and sector was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata2.html.* A table of information by stock and gear (without sector affiliation) was posted at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/asmcvdata.html.* These data sets have been truncated to protect confidentiality, as required by the Magnuson-Stevens Act.

Amendment 16 requires us to set sufficient coverage levels and, as required, we have undertaken analyses and made a determination of the coverage level. Through the proposed rule for this action we announced our determination and sought comment. In accordance with the 2012 ASM settlement agreement we have posted a detailed summary of our analyses, and the data used, for the public. The Council commented on the proposed rule, including proposed ASM coverage levels, and we respond to those comments in this interim final rule.

As discussed in the preamble of this rule, we will continue to accept comments on the final rule about the required ASM coverage levels, and supporting analyses and data.

Oceana's comments on the analyses of bias (numbers 4 and 5 in Comment 12) are based on the incorrect premise that an examination of bias must be made at the sector level. The Summary Document posted online presents our current analyses of bias. The analyses concluded that while there are indicators of observer bias for the overall fishery, the results are not specific enough to support any quantitative adjustments at the stock ACL level. The sensitivity analyses indicates, however, that it is unlikely that observer bias will cause ''true'' catch to exceed stock ACLs.

By extension, this is also likely true for monitoring most of the ACE poundage because ACL accounting is a compilation of ACE accounting.

Oceana's request that we analyze how much discard rates would need to increase on unobserved trips to avoid exceeding an ACL with a 0-percent probability of an overage is based on a misunderstanding of the statistical method employed. All measurements of catch will have some error. AMs are triggered when the estimate exceeds the allocation. Accordingly, a 50-percent measure of probability of an overage is appropriate as it represents a neutral risk of over-estimating or underestimating the catch. In our bias analyses we used an exceptionally risk-averse 5-percent probability that takes into account the error estimate and ensures that the estimate is not wrong about ACL overages more than 5 percent of the time. The notion of risk in estimates underlies the system of OFLs, ABCs, ACLs and ACEs set up in the Magnuson-Stevens Act and the NE multispecies FMP. Amendment 16 includes a layered approach to AMs at different levels, including a requirement that sectors cease fishing when they exhaust their ACE. The monitoring system is also layered, including not only ASM to estimate discards on unobserved trips, but sector buffers and progressive reporting requirements that increase in frequency as sectors approach end of their allocation. Further, Amendment 16 specified that sector vessels would have less than 100 percent ASM coverage, which requires that catch information be an estimate. By its nature, using an estimate of catch precludes Oceana's assertion that the tolerance for the potential of an ACL or ACE overage should be zero. Accordingly, we will not be conducting the additional analyses requested by Oceana, and therefore will not repropose ASM coverage requirements based on those requested analyses.

*Comment 13:* Oceana commented that the proposed rule did not discuss timeliness of catch data and that the proposed ASM coverage levels did not include standards for temporal distributions of observers and at-sea monitors that will distribute coverage throughout the fishing year in a manner sufficient to monitor ACEs in real time.

*Response:* Monitoring data can be grouped into three main forms of data: electronic, paper, and biological. Each form of data has a submission time as defined in contracts with monitoring providers. Both at-sea monitors and observers adhere to the same data submission times related to catch monitoring. The electronic form of data is used for the weekly sector catch report and must be submitted within 48 hours of landing. Electronic data are reported through a secure Web site and include trip statistics such as dates and times, gear type, and haul by haul information on catch (location, species, weight, and fish disposition). The paper logs must be received within 5 calendar days. The paper logs have more detailed information that supports the calculations and sampling methods. The electronic data are verified, including plotting tow locations, comparing gear types to past trips, and testing general ranges of species complexes and weights for accuracy, and species identification photographs are confirmed. The electronic data are verified by a trained editor and loaded to an Oracle database that is shared with sector managers and vessel owners within 24 hours of receiving it. Once the paper logs are received, a second-level data quality check is performed, comparing the paper data to the electronic data in the database. Biological specimens (collected for tagging studies, to support trainings, or to validate species identifications), must be received within 5 calendar days. A more detailed discussion of data timeliness is provided in Appendix F at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.*

Sectors are required to report their catch, at the sub-trip level, on a weekly basis. However, as sectors approach the end of their ACE (90 percent of any ACE

in FY 2013) the reporting requirement becomes daily. This ensures that NMFS and the sectors have more timely data when it is most necessary.

The PTNS system which selects trips for coverage by at-sea monitors and observers continually selects trips throughout the year on a random basis to achieve the target coverage. The PTNS system uses a systematic sampling design and continuous updating of coverage rates to prevent cost overruns. This balances the available amount of monitoring sea-days (based on budget) throughout the year as we achieve the target coverage rate. This ensures that coverage occurs throughout the year in a fair and equitable way that is distributed in a statistically random manner among all trips to assure coverage is representative of fishing activities by all sector vessels, and by all operations through the fishing year, as required by the regulations at 648.87(b)(1)(v)(B)(*3*).

*Sector ASM Proposals*

*Comment 14:* Pew, CLF, MCFA, and MCCS do not support the use of a fixed discard rate method in place of an ASM program. Pew and CLF argued that the fixed discard rate method does not comply with the 14-percent coverage rate requirement. MCFA and MCCS noted that the data collected by monitors contributes to stock assessment science, and also noted the valuable role of observers beyond discard accounting.

*Response:* We agree with the concerns raised above. Because we have pledged to pay for the required 14-percent coverage in FY 2013, all sector-proposed ASM plans have been removed from final operations plan, and are not considered further in this final rule. Several data sources are integral to monitoring the NE multispecies fishery, including dealer data, self-reported vessel trip reports, and observer/monitor data. Observers and at-sea monitors also collect important information, on location, about target species and protected species interactions.

*Industry-Funded Monitoring Requirements for Exemptions*

*Comment 15:* Industry, the Council, ME DMR, the Portland Fish Exchange, and one sector submitted comments pertaining to the proposed requirement for industry-funded monitoring on 100 percent of trips using certain exemptions or provisions (for targeting redfish with small mesh, fishing in the SNE/MA winter flounder stock area with winter flounder onboard, and fishing without ACE). All stated that industry cannot afford to pay for monitoring in FY 2013. Several speculated that requiring industry to pay for monitoring will render these exemptions useless, and may remove the advantage to participate in sectors.

*Response:* As discussed in greater detail in the preamble to the proposed rule, we have several concerns regarding the reliability of discard estimates and the potential effects of any bias on observed trips, our ability to achieve required coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. Given the low ACLs proposed for FY 2013, we acknowledge that the decision to join a sector or remain in the common pool will be a difficult decision for a vessel owner. We also understand that this industry-funded requirement may limit the usage of these exemptions. For these reasons, we are actively exploring ways to fund monitoring costs for these exemptions, and will provide additional information as it becomes available.

*Comment 16:* Industry, the Council, and ME DMR commented we should have informed the Council that we were considering 100-percent industry-funded monitoring for these exemptions and explained our rationale for proposing this prior to the proposed rule being published. The Council commented that they did not recommend 100-percent monitoring to be a condition of access to closed areas. They also commented that the coverage rate analysis indicates that 22-percent coverage is sufficient for monitoring ACLs and, therefore, additional coverage for certain exemptions may not be necessary.

*Response:* Sectors first proposed that several of these approved exemptions (for targeting redfish with small mesh and fishing in the SNE/MA winter flounder stock area with winter flounder onboard) be allowed only when a NMFS-funded monitor is assigned to the trip. During internal review and discussion of these exemptions, we determined that current funding levels would not allow us to support NMFS-funded monitoring of 100-percent coverage of trips under these exemptions; however, we agreed to provide the opportunity for industry to use these exemptions, provided industry would pay for at-sea costs. Although our monitoring coverage analysis indicates that 22-percent coverage is sufficient to monitor discards for most sector trips; we believe that certain exemptions will require additional monitoring. The redfish exemption includes catch thresholds and the use of smaller mesh nets, which requires monitoring to ensure that catch thresholds are not exceeded. Fishing with no ACE requires monitoring because calculated discard rates for these strata cannot be assigned to such trips without causing the sector to have discards associated with the limiting stock. Requiring a monitor on trips in the SNE/MA winter flounder stock area with winter flounder onboard will help to ensure that catch of winter flounder has not come from the SNE/MA winter flounder stock area. We believe that these coverage requirements are necessary to monitor the use and effectiveness of these exemptions in FY 2013. Based on the information acquired in FY 2013, we will reconsider the need for additional monitoring in future years.

*Comment 17:* We received several comments seeking alterations to, or revocation of, exemptions requiring 100-percent industry-funded monitoring. CLF and Pew recommended disapproval of exemptions that may compromise monitoring. ME DMR stated that we should work with sectors to develop triggers to recalibrate coverage.

*Response:* We plan to monitor these exemptions and have proposed catch triggers for targeted redfish trips and fishing without ACE that, if exceeded, may result in the removal of that exemption for a given sector during the FY. We will continue to assess our ability to adequately cover standard sector trips with monitors and ensure that the 100-percent monitoring requirement for exemptions does not impact coverage for standard sector trips. We intend to notify and work collaboratively with monitoring providers and sectors in advance of revoking any of these exemptions, to develop mutually agreeable solutions to any problems encountered.

*Comment 18:* One sector agreed with our concern that our proposal to require 100-percent industry-funded monitoring coverage of certain exemptions could limit monitor availability. If federally funded monitors were approved for use on exemption trips, this sector also questioned how assigning a federally funded observer would reduce the number of observers available to cover standard sector trips.

*Response:* We expressed concern in the proposed rule that using NMFS-funded monitors or observers on exemption trips could reduce the number of observers or monitors available to cover standard sector trips, specifically that: (1) Vessels would call into PTNS indicating their intent to use an exemption and, once given a waiver from having to carry an observer or

monitor, the vessel would not take a trip, but wait to be selected for an observer or monitor which could require divert resources away from standard sector trips for these exemption trips, effectively undermining random selection; and (2) that vessels would call into PTNS to use an exemption, be selected for NMFS-funded coverage, affecting the number of observers and monitors available to cover standard sector trips, given that there is a limited pool of observers and monitors based on available funding to meet the 22-percent coverage level. Based on these concerns, we proposed requiring sectors to develop an industry-funded ASM program for use in these exemptions.

*Sector Exemptions*

*Comment 19:* We received comments from one industry member supporting the extension of approved exemptions to sectors for FY 2013. The U.S. Coast Guard commented that approved exemptions should be granted to all sectors, to facilitate enforcement.

*Response:* During FYs 2011 and 2012, we analyzed, proposed, and approved each sector exemption so that it would be available for all sectors to request, or modify inseason, without requiring additional analysis. In FY 2013, each sector exemption was proposed and analyzed as if all sectors were using the exemption. Therefore, all sectors may elect any approved exemption in its final operations plan, and it is up to the sector's discretion to determine which exemptions will most benefit its members. However, for FY 2013, two sectors proposed an operations plan provision to fish when the ACE for an allocated stock had been reached. Because each sector may have different fishing practices that may influence our ability to approve or disapprove these provisions (i.e., practices that meet the NMFS-imposed limiting stock 1-percent bycatch threshold), our analysis focused on each individual sector's catch history. Therefore, provisions to fish without ACE will only be granted to the requesting sectors, which meet the 1-percent threshold.

*Comment 20:* ME DMR commented that gear restrictions in the CA II SAPs are unnecessary because a sector's activities are controlled by its ACE. ME DMR also stated its opposition to any further efforts that restrict efficiency and flexibility (i.e., imposing modifications from sector requests or disapproving an exemption). MA DMF urged caution in the approval of many of the exemptions, stating that the removal of some effort controls are unwise, counterproductive, and provide uneven distribution of benefits between fishermen.

*Response:* We agree that many gear restrictions may no longer be necessary in a catch-limit based system. During FYs 2010 through 2012, sectors were granted exemptions from numerous gear requirements, including seasonal closures for gillnet gear, gear hauling requirements, net limits, and minimum mesh size requirements. We support granting additional flexibility to sectors through exemptions, provided that these exemptions do not negatively impact protected species, habitat, spawning aggregations of fish, or other stocks. For FY 2013, we are again approving a number of exemptions from gear restrictions, given that a sector's activity is limited by its allocated quota. We believe the approved exemptions and provisions will provide sectors with needed flexibility in a year when some quotas may be dramatically reduced.

The 2011 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2011–April 2012) (*http://www.nefsc.noaa.gov/publications/crd/crd1230/crd1230.pdf*) supports the assertion that benefits have been distributed unevenly but it does not attribute the uneveneness to exemptions. Most NE states experienced increases in nominal revenues from the landings of all species in 2011 from 2010, and were at a 3-yr high in Massachusetts, New Jersey, New York, and Rhode Island. However, for several states (Connecticut and Maine), revenue from all species declined between 2010 and 2011. While the number of groundfish trips declined for all vessel size categories over a 3-yr period, the largest decline occurred in the 30-ft (9.1-m) to 50-ft (15.2-m) vessel length class. The smallest decline occurred in the largest vessel size class (over 75 ft (22.9 m)). There is no clear connection between a particular exemption and these effects. Further, it is unclear if these changes result from exemptions granted to sector vessels, changes in ACLs, or some other reason(s).

*Comment 21:* NESSN and one sector supported the approval of all previously approved exemptions for FY 2013.

*Response:* Most previously approved exemptions have been approved again in FY 2013. Many of these exemptions provide flexibility by eliminating effort controls, while other exemptions will help to reduce costs or allow a vessel to target healthy NE multispecies stocks. We believe these approved exemptions are warranted, given the fact that sectors are allocated an ACE, which will constrain their impacts. One exemption that was previously approved was disapproved for FY 2013. The GOM sink gillnet mesh exemption was approved in previous years to encourage vessels to target GOM haddock, a relatively healthy stock. However, given that GOM haddock is experiencing overfishing and approaching an overfished status, this exemption is not justifiable, and has been disapproved.

*Comment 22:* Several individuals submitted comments pertaining to the development of exemptions. One sector noted industry's time and effort spent in the development of exemptions that would afford more flexibility, allow sectors to more fully utilize their ACEs, and mitigate low catch limits, and raised concern with NMFS's modifications to these requests. The Council also claimed that NMFS's modifications to these exemptions have wasted the time taken to develop these exemptions by the Council, public, and NMFS. NESSN commented that it was worried that we are applying a ''one size fits all'' approach to exemption approval. NESSN also recommended that we should communicate exemption concerns with the sectors to find reasonable, workable alternatives prior to publishing a proposed rule.

*Response:* We acknowledge each sector's efforts in the development of operations plans, weekly reports, and summation of the sectors activity in the sector annual report. Through the sector operations plan review process, we have attempted to establish a collaborative process. Each summer, we encourage sectors to submit exemptions for initial NMFS review and comment, and we attempt to provide sectors with feedback on regulation citations and additional issues to address. Sectors submit operations plans, including exemptions, on September 1, and we provide sectors with comprehensive comments. Once reviewed, we provide feedback to sectors on those plans and exemption requests, and allow time for sectors to address our concerns. We meet with/Regional Office and NEFSC staff to discuss ideas and, if there is significant concern with a proposed exemption, we collaborate to find a way we could approve such exemption.

*Comment 23:* DMR, the Portland Fish Exchange, NSC, and a number of industry members raised concern that we did not involve the Council in the development of the proposed rule, in particular that we are changing Council recommendations for exemptions, and that exemption concerns should have been addressed and evaluated through the Council process.

*Response:* Amendment 16 established the current process for a sector to submit a preliminary operations plan to the Council for approval to form as a sector; and a final operations plan,

including exemption requests and membership information to NMFS for approval to operate. Our process to approve a sector to operate and to allocate ACE falls outside of the Council process. We have specifically sought the input or clarification of the Council on two exemptions, and will continue to do so as necessary. In addition, we have worked with sectors in the development process of exemptions (see response to Comment 22), and have provided feedback through the review of the operations plans.

*6.5-inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets To Target Redfish in the GOM*

*Comment 24:* We received numerous comments regarding the requirements associated with the redfish exemption, specifically the requirement for 100-percent industry-funded monitoring. Individual industry members and one sector contended that sector vessels should have the option to take a federally funded observer, and that changing this requirement from how it was approved for FY 2012 came too late in the year for vessels to plan for FY 2013. Industry and ME DMR commented that it is inappropriate to make alterations from the Council's original request for this exemption. The Council noted its opposition to industry funding of all observer coverage for this exemption.

*Response:* As described in the proposed rule, and explained in comments in this preamble, we cannot provide NMFS-funded monitors for use on exemption trips requiring 100-percent monitoring. Use of NMFS-funded monitors was allowed in the redfish exemption for FY 2012 in part because it was a short-term exemption; however, after additional consideration by NMFS following the publication of the FY 2012 proposed rule about its use over an entire fishing year in combination with other exemptions requiring additional monitoring, we became concerned about the reliability of and potential bias of discard estimates, our ability to achieve required coverage levels, monitor availability, and our ability to cover the administrative costs associated with NMFS-funded monitors on trips using these exemptions. While it was too late to withdraw this provision in the final rule for FY 2012, it was necessary to modify this provision for FY 2013. Should we receive additional money to fund monitors, we will promptly alert the public of this and explain how money would be dispersed.

*Comment 25:* Industry and ME DMR questioned the two NMFS-proposed threshold requirements that will be used to monitor this exemption.

*Response:* The final rule implementing the 4.5-in (11.4-cm) redfish exemption in FY 2012 included two performance requirements to ensure that the exemption does not negatively impact fish stocks: A monthly catch total of NE multispecies (including landings and discards) that must be comprised of at least 80 percent redfish; and a requirement that total NE multispecies discards (including redfish discards), may not exceed 5 percent of all NE multispecies caught monthly with small-mesh nets. These thresholds were specified to help ensure that vessel do not target other stocks, to help mitigate catch of sub-legal NE multispecies (including redfish) and were determined to be consistent with catch information from REDNET research trips. We believe that these requirements are necessary to ensure that vessels target redfish while using this small-mesh exemption. In future years, we could consider altering these thresholds, based on the data collected from trips using this exemption in FY 2012 and FY 2013.

*Comment 26:* We received several comments in opposition to the redfish exemption. CLF, Earthjustice, Pew, and one sector raised concern regarding the life history of redfish, noting that the species is slow growing and long lived, making it susceptible to overharvest. CLF, Earthjustice, and Pew raised concern about the allowance of small mesh nets and the impacts on juvenile NE multispecies, which could impact rebuilding. Earthjustice opposed granting the exemption, noting that approval of 4.5-inch (11.4-cm) mesh is a substantial deviation from the current minimum mesh size.

*Response:* We understand the concerns raised by these groups, and have therefore set monthly thresholds to ensure that vessels using small mesh do not adversely impact the redfish stock, or other groundfish stocks. We will monitor these thresholds on a monthly basis, and will revoke the exemption inseason, if necessary to sustain the FMPs fishing mortality objectives. We agree that the use of 4.5-in (11.4-cm) mesh is a substantial deviation from the current minimum mesh sizes; however, we believe that the additional restrictive measures that the vessel must adhere to when directing on redfish with small mesh, will help address these concerns.

*Limits on the Number of Gillnets Imposed on Day Gillnet Vessels*

*Comment 27:* We received several comments from industry, two sectors, the Council, and ME DMR supporting the exemption from the limits on the number of gillnets imposed on Day gillnet vessels, arguing that harbor porpoise interactions have decreased since the approval of this exemption, that it is more appropriate to allow sectors to determine if the use of selective gear is necessary, and that effort controls are not necessary in a quota-based fishery. One sector also noted that extra nets allowed by this exemption provides the flexibility to experiment with mesh-size and placement to avoid limiting stocks, while still maintaining nets to fish normally.

*Response:* In the proposed rule, we raised concern about the potential for impacts from this exemption on protected species. We have since confirmed public comment indicating that the number of harbor porpoise interactions has decreased recently, and approved the exemption.

*Comment 28:* CLF, Earthjustice, MA DMF, Pew, and the Union of Concerned Scientists raised concerns about the continued approval of the exemption from the limit on the number of gillnets imposed on Day gillnet vessels. The environmental organizations were specifically concerned with the impacts to non-target and protected species, as well as the potential for increased gear loss. MA DMF commented that they are concerned about the impacts of an unlimited number of gillnets on spawning cod, citing a MA DMF scientific paper published in the North American Journal of Fisheries Management 2012.

*Response:* As stated above regarding this exemption, we do not believe concern for harbor porpoise warrants its disapproval at this time. We will continue to evaluate the impacts of this exemption, and will reconsider the approval of this exemption in future years, as needed. Based on concerns for spawning cod raised by MA DMF, we do believe that gillnet restrictions are warranted to protect this vulnerable fishery and, therefore, are restricting the use of this exemption to periods when cod spawning does not take place, as described above in Exemption 17 (Limits on the Number of Gillnets Imposed on Day Gillnet Vessels). Sectors vessels would be limited to fish the number of gillnets allowed by each RMA in the times and areas described where cod spawn.

*Comment 29:* Industry and one sector commented on the negative economic impacts if this exemption were disapproved. Industry stated that vessels cannot afford gear reductions in light of lower ACLs. One sector commented that revoking this

exemption would disproportionately impact smaller, inshore vessels.

*Response:* We understand industry's concern about revoking this exemption, given that vessel owners may have invested in additional gillnet gear, and that it is likely that there will be limited return on this investment in FY 2013, given the low ACLs. However, data in section 4.1.4.2 of the Sector EA indicates that catch per unit effort for gillnet vessels is decreasing. In other words, gillnet vessels are fishing harder and catching less fish. This is not the intended outcome of this exemption. A decrease in available fish, such as GOM cod, could explain this analyses and why the commenters are arguing that they need the exemption. Vessels need the ability to fish additional nets to catch enough fish that the trip is profitable. Because of these concerns, we are approving this exemption to provide some flexibility for smaller, inshore vessels. We are approving this exemption seasonally in FY 2013 due to concern over the affect that decreased catch per unit effort and increased gear in the water could have on spawning cod.

*Gear Requirements in the Eastern U.S./Canada Area*

*Comment 30:* We received several comments from industry, one sector, the Council, and ME DMR supporting the exemption from the selective gear requirements of the Eastern U.S./Canada Area, arguing that approval of this exemption will allow sectors to more fully harvest their Eastern GB allocations, and that it is more appropriate to allow sectors to determine if the use of selective gear is necessary.

*Response:* The exemption from this gear requirement was approved in FYs 2011 and 2012, and is again approved for FY 2013. We believe that these restrictions are no longer necessary under sector management because sectors are restricted to an ACE for each NE multispecies stock, which limits overall fishing mortality. We agree that sectors should be allowed the flexibility to determine if, and when, selective gear should be used.

*Seasonal Restrictions for the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail/Haddock SAP*

*Comment 31:* We received several comments on the exemption request for year-round access to the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail/Haddock SAP. Industry and the Council commented that the exemption should not be altered from the Council's original request to extend the opening to May (for a May through December opening for the Eastern U.S./Canada Haddock SAP, and May through January for the CA II Yellowtail Flounder/Haddock SAP). The Council also submitted comments regarding seasonal access to the Eastern U.S./Canada Haddock SAP, rejecting NMFS's position that this area should not be opened in May due to GB winter flounder spawning, and citing a study by Smolowitz *et al.* in 2012, which indicates that peak GB winter flounder spawning occurs in February and March in CA II; the study found low densities of winter flounder in the area in May. Industry reaffirmed the Council's comment on spawning with anecdotal evidence. In addition, industry noted that we did not raise concern with providing access to the Eastern U.S./Canada Haddock SAP in January and, consequently access should be allowed at this time. Industry also noted that the use of selective gear should prevent catch of certain stocks, which were noted with concern in the proposed rule.

*Response:* We concur with the updated Smolowitz *et al.* 2012 study that GB winter flounder spawning generally does not occur in May. Based on this updated information, we have expanded access to both SAP areas from May through the seasonal closure of each SAP. The proposed rule incorrectly cited the GB cod spawning season raised by the NEFSC, which is January through April for the Eastern U.S./Canada Haddock SAP (Berrien and Sibunka, 1999). Therefore, we do not believe it is appropriate to extend the season beyond the closure of the SAP, on December 31.

After reviewing numerous comments on these exemptions, we are approving them without the selective trawl gear requirement, given that sectors are limited by their ACE and because these areas are closed during peak spawning periods. Vessels may use any gear approved for the respective SAPs, as well as the standard otter trawl. Given the low ACL proposed for GB yellowtail flounder and the likelihood that it will be a limiting stock, we expect that many sectors will continue to use selective gear to target GB haddock in this SAP.

*Comment 32:* MA DMF supported the SAP exemptions as proposed, asserting that opening these areas year-round may have negative effects, especially on spawning fish. MA DMF also requested that we provide the Council with data on the performance of selective gear.

*Response:* We agree that protecting spawning fish is critical, especially in light of declines in some NE multispecies stocks. Therefore, we have limited access to seasons where spawning is not of concern. For reasons described in the response to Comment 29 above, we are extending the exemption from the trawl restrictions in the Eastern U.S./Canada Area to these two SAPs.

*DSM Requirements for Vessels Using Hand-Operated Jig Gear*

*Comment 33:* The MFCA and MCCS support exemptions from DSM for jig and handgear vessels, arguing that these vessels catch minimal amounts of fish. They also note that the gear used by these vessels is the same as gear used by the recreational fleet, which does not receive monitoring. MCFA and MCCS also state that resources could be better used by monitoring the vessels that catch larger volumes of fish.

*Response:* Regulations implementing Amendment 16 established DSM requirements for the commercial fishing fleet. The Council did not elect to impose monitoring requirements on other segments of the fishery. The Council has considered and approved regulatory exemptions from DSM for certain categories of common pool vessels because the vessels encounter small amounts of NE multispecies, and we have provided similar exemptions for sector vessels (for Handgear-A permitted, for vessels fishing exclusively west of 72°30′ W. long., and for monkfish Category C- and D-permitted vessels fishing on a monkfish trip in the monkfish SFMA when such vessels are required to fish with nets containing 10-inch (25.4-cm) mesh codends or gillnets. For FY 2013, we received a request to exempt hand-operated jig vessels from DSM requirements, and believe the data summarized in the proposed rule demonstrate that only small amount of NE multispecies is discarded by vessels using this gear; therefore, the exemption is warranted. FW 48 proposes eliminating the DSM program. However, because FW 48 measures have not been approved at this time, we are approving this additional exemption from DSM requirements for hand-operated jig vessels.

*Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board*

*Comment 34:* We received several comments from industry and ME DMR supporting the ability of vessels to fish in multiple BSAs.

*Response:* The Council has not supported, nor have we implemented, regulations that universally restrict a vessel's ability to fish in multiple BSAs. To clarify the current requirements,

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder. Therefore, a vessel with GOM or GB winter flounder on board could only transit through the SNE/MA winter flounder stock area with its gear stowed in accordance with the provisions of § 648.23(b), and would be prohibited from fishing in the SNE/MA winter flounder stock area. This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area. We are approving an exemption from the prohibition against fishing in this area, provided a monitor is onboard all trips using the exemption. The monitor will be able to verify and accurately attribute winter flounder to the appropriate stock. See the response to Comment 16 for specifics on 100-percent industry-funded monitoring.

*Comment 35:* One sector and NESSN commented on the SNE/MA winter flounder exemption, noting that this exemption would provide efficiency by allowing a vessel to combine two trips into one trip, because currently, they are prohibited from fishing in the SNE/MA winter flounder stock area, if they have winter flounder onboard from another stock area. Fishing fewer trips may have the added benefit of reducing declarations or requests for monitors.

*Response:* We agree that approval of this exemption would increase a vessel's efficiency. We have approved this exemption, provided that these vessels comply with the 100-percent industry-funded ASM requirement, and note the possibility that this increase in efficiency may result in increased availability of monitors. Achievement of required monitoring coverage levels and observer availability will be monitored throughout the year and adjusted as needed.

*Comment 36:* One sector and NESSN questioned the basis and clarity of our concern that bias could be created by including data collected from these exemption trips in the calculated discard rate that is applied to unobserved trips. They contend that the order of fishing in areas should not matter, and that this exemption more closely mirrors historic fishing practices prior to the approval of Amendment 16 (i.e., prior to FY 2010).

*Response:* Historically (prior to 2010), vessels were allowed to retain SNE/MA winter flounder and therefore were free to fish between stock areas. However, the 2010 prohibition on retaining SNE/MA winter flounder, and the associated prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard, changed fishing practices. After additional consideration of the comments received and further review of the exemption request, we agree that trips using this exemption are representative of standard sector trips, and that the order that areas are fished will not introduce bias to discard rates. Also, having a monitor onboard will help to ensure that catch of winter flounder from other stock areas is properly recorded, and document SNE/MA winter flounder that is not retained.

*Comment 37:* CLF and Pew commented in opposition to the winter flounder exemption, stating that SNE/MA winter flounder is overfished, and approval of the exemption risks additional mortality to this stock if there is an increase in misreporting.

*Response:* We approved this exemption, provided an industry-funded monitor observes 100 percent of these trips. Having a monitor onboard will help to ensure that catch of winter flounder from other stock areas is properly recorded, and document SNE/MA winter flounder that is not retained.

*Sampling Exemption*

*Comment 38:* The U.S. Coast Guard recommended disapproval of the sampling exemption in order to increase the enforceability of LOAs and exempted fishing permits, expressing concern about allowing vessels to retain undersized fish, access closed areas, and exceed possession limits for research purposes without advanced notice. They argued that notice is needed to ensure that research requirements are understood and uniformly enforced.

*Response:* We value the input provided by our partners in fisheries enforcement. However, this exemption has been approved for only two sectors, the Fixed Gear Sector and the Northeast Coastal Communities Sector, to facilitate information collection programs included in each sector's operations plans. We believe that allowing only temporary possession through the sector operations plan minimizes the application burden to the public and that the proposed rule provided advanced notice of these research activities. Should another sector request the exemption, we will share this information with the U.S. Coast Guard and NMFS's Office of Law Enforcement. The sectors have requested, and are only being granted, temporary relief from the requirement to immediately discard under-sized or prohibited species, for the purposes of collecting scientific information. Vessels conducting this research must return fish to the sea as soon as practicable after sampling. To aid in enforcement, a sector vessel's LOA would detail these research activities.

*GOM Sink Gillnet Mesh Exemption in May, and January Through April*

*Comment 39:* MA DMF, MCCS, and MCFA opposed granting this exemption in FY 2013, given that GOM haddock is experiencing overfishing, and is approaching an overfished condition.

*Response:* This exemption was previously approved to provide sector vessels with an additional opportunity to target what was then a relatively healthy stock—GOM haddock. However, a 2012 operational assessment of the GOM haddock stock showed that the stock is experiencing overfishing and is approaching an overfished condition. We agree that it is inappropriate to approve an exemption that would allow increased targeting of a stock in poor condition, and therefore have disapproved this exemption for FY 2013.

*Comment 40:* Several industry members, ME DMR, and NESSN supported approval of the GOM sink gillnet mesh exemption. Industry argued that the sector's ACE, including the ACE for GOM haddock, will constrain the sector's impact when fishing under this exemption, and that it is the sector's responsibility to ensure that the behavior of its members results in appropriate usage of ACE. In addition, industry and NESSN asserted that it is difficult for gillnet vessels to catch haddock using mesh larger than 6 inches (15.2 cm) due to its shape. Finally, industry stated that disapproval of this exemption will make it more difficult to get a return on the investment of new nets.

*Response:* We generally agree that a sector's impacts are limited by an ACE, and that sectors should be free to decide how to maximize their usage of ACE, including through the use of selective gear, as necessary. However, given that GOM haddock is approaching an overfished condition, and may be considered a limiting stock for vessels fishing in the GOM, we believe it is inappropriate to grant an exemption that encourages increased targeting of this stock. Sectors may again request this exemption in future years, and we will reconsider granting this exemption based on updated GOM haddock stock information.

*Comment 41:* MA DMF acknowledged our concern for GOM haddock, but recommended that we reexamine net mesh selectivity, given that FW 48 proposes to decrease the minimum fish size for most stocks.

*Response:* We acknowledge MA DMF's concern about net mesh

selectivity; however, the Council recommended decreasing the minimum size for NE multispecies as a way to reduce discards and provide more revenue for sector vessels using current mesh sizes, and not to increase catch of smaller fish. Given the status of GOM haddock, it would not be prudent to allow a vessel to increase effort on GOM haddock. Therefore, we do not believe a review of selectivity of net mesh is warranted at this time.

*Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips*

*Comment 42:* The U.S. Coast Guard opposed this exemption, stating that allowing legal-sized NE multispecies and small mesh onboard would render minimum fish and mesh sizes unenforceable because the proper use of small mesh nets is only verifiable during a Coast Guard boarding. They also raised concern that, if approved, a monitor would be placed in an enforcement role. CLF and Pew raised concern that approval could increase mortality of juvenile fish and may increase the risk that gear will be deployed incorrectly.

*Response:* We share the U.S. Coast Guard's concern about enforceability. With different mesh sizes available vessels can too easily alter their nets or fishing behavior in anticipation of boarding to avoid detection of illegal fishing. We are therefore disapproving this exemption. We also raised concern in the proposed rule that at-sea monitors lacked training to monitor the small-mesh portion of the trip. Based on these concerns, this exemption was not approved. We also share the concern of CLF and Pew, as the proposed rule raised concern that a vessel could circumvent the rules and target allocated NE multispecies with small mesh, thereby increasing the catch of juvenile fish.

*Comment 43:* We received several comments regarding potential implementation of this exemption. ME DMR stated that it would be inconsistent with the current exempted fisheries to adjust NE multispecies bycatch levels below 5 percent. ME DMR also recommended that we not exclude data collected on trips using this exemption from the calculated discard rates for unobserved trips.

*Response:* This exemption has been disapproved.

*Comment 44:* NESSN and one sector commented that approval of this exemption could help minimize costs.

*Response:* We support the sectors' ability to request exemptions that will increase flexibility and lower operations costs, and have approved numerous exemptions to that end. However, due to enforcement concerns raised above in Comment 42, we are not approving this exemption for FY 2013.

*Comment 45:* NESSN and one sector asserted that our justification for requiring 100-percent industry funded monitoring was weak given our acknowledgement of the minimal bycatch of regulated NE multispecies in the small-mesh fisheries. They also stated that their proposal to deduct all bycatch of NE multispecies from their ACE further undermines our reason for disapproval. They further commented that we did not provide sufficient explanation as to the additional training required to deploy monitors on small-mesh exempted fishery trips. Finally, in place of monitoring requirements, the sectors claimed that selective gear requirements would have been more reasonable.

*Response:* The sectors' initial request for this exemption included a requirement that the exemption could only be used on a monitored trip. They argued that the monitor would be able to correctly attribute and confirm catch from small-mesh tows and from large-mesh tows. In addition, given our concerns about the potential for directed trips to skew discard estimates for unobserved trips and the potential to not achieve required coverage levels, we proposed this exemption with 100-percent industry-funded monitoring. We also noted that monitors do not receive training for exempted fisheries, as exempted fisheries are only subject to NEFOP coverage specified by SBRM. NEFOP observers certified to be deployed on small-mesh exempted fishery trips receive additional training in small-mesh fisheries, which covers gear modifications and methods for measurement, sampling scenarios, fish identification, incidental take sampling, and reporting requirements. While deducting the bycatch of regulated NE multispecies from the sector's ACE helps to address some concern, this exemption is not approved for use in FY 2013 due to enforcement and monitoring concerns highlighted in response to Comment 42 above. No further gear modifications were considered.

*Closed Area Exemptions*

*Comment 46:* Numerous individuals submitted comments on the Council's approval of a measure proposed in FW 48 that would allow sectors to request access to year-round mortality closed areas, and on the requests that will be considered in a future rulemaking. Many of these comments were specific to our consideration of requiring industry-funded ASM on 100 percent of trips, and commenters encouraged us to conduct a full analysis of these exemptions.

*Response:* This final rule disapproves exemptions from closed areas, because including these exemptions in this rulemaking could have delayed the approval of sector operations plans and allocations beyond May 1, due to needed analysis for these exemptions. We are in the process of evaluating the impacts of these requests. We intend to publish a proposed rule and accompanying analysis in the coming months, for potential implementation during FY 2013. These comments, therefore, are not relevant to this action, and the public is encouraged to comment on the upcoming rule proposing exemptions to year-round mortality closed areas for approval.

*Provisions To Fish Without ACE*

*Comment 47:* NESSN and NEFS 5 submitted several comments in support of their request to fish without ACE, stating that the data that they submitted demonstrates that the sector's catch of the limiting stock is minimal. MCCS supported the program, in theory, but believed additional development is needed before such a program is implemented.

*Response:* We support providing sectors additional opportunities to target healthy NE multispecies stocks and other non-groundfish stocks in light of low ACLs for FY 2013. We proposed and are approving several of the sectors' requests, based on our ability to verify minimal catch of the limiting stock (using a threshold of less than 1 percent) in observer/ASM and VTR data. We believe that the requirements of these programs, additional reporting and monitoring requirements, and a plan to revoke this provision if the sector encounters more than 100 lb (45.4 kg) of the limiting stock are adequate to monitor this exemption; however, we will monitor the usage of this provision closely and, if necessary, will develop additional requirements for future FYs.

*Comment 48:* CLF and Pew expressed concern that the approval of this provision could result in additional mortality on depleted stocks, and increase incentives to discard. They also believe that additional analysis is necessary prior to approving these programs.

*Response:* The proposed rule raised serious concern with these provisions, given the very low 2013 quotas for some stocks. However, we are approving these programs under conditions designed to address these concerns. These programs are granted only for the two requesting

sectors to target other species (i.e., non-NE multispecies stocks) when they have a limiting NE multispecies stock. We have established additional reporting and monitoring requirements for sector vessels to aid in our own monitoring of these programs. We believe requiring 100-percent monitoring on these trips minimizes misreporting concerns, and will help to collect information on encountered stocks. There are also other measures designed to maintain close control over and monitor catch, such as the 100-lb (45.4-kg) threshold on catching the limit stock, revoking the program once this threshold is reached, and requiring acquisition of ACE to account for any catch of the limiting stock.

These two requesting sectors originally sought numerous provisions to fish without ACE. We reviewed observer/ASM and VTR data, and only proposed provisions where the data indicated that the limiting stock was less than 1 percent of the total catch. Through historical practices, we believe that the sectors have adequately demonstrated their ability to target other species, while avoiding the limiting stock.

*Comment 49:* MA DMF supported the monitoring requirements proposed for this program, but recommended limiting the amount of time gillnets may be fished. In addition, MA DMF questioned whether the approval of these programs would result in a shift in effort away from the NE multispecies fishery and into other fisheries.

*Response:* Provisions to fish without ACE have been approved, provided 100 percent of the trips receive an ASM. This is necessary to sufficiently monitor these programs and also ensures that trips fishing without ACE are assigned observed discards (an unobserved trip would be assigned calculated discards, including for the limiting stock that must be avoided). As highlighted above, these provisions were approved based on our ability to verify very minimal catch of the limiting stock in FY 2010 and 2011 observer/ASM and VTR data for the requesting sectors and are approving these programs without restrictions on the amount of time that gear may be set. We will monitor the sectors using this provision, and may consider additional restrictions, if necessary.

We support providing sectors additional opportunities to target healthy NE multispecies stocks and other non-groundfish stocks in light of low ACLs for FY 2013, but note the importance of monitoring the use of this provision for impacts on other species. We request information on anticipated effort shifts in each sector's operations plan, and require catch and effort information in each sector's annual report. We will monitor the use and impact of this provision in FY 2013, and will reconsider approval and will consider additional restrictions in future FYs, if necessary.

*Inshore GOM Restrictions*

*Comment 50:* Pew and CLF expressed support for the inshore GOM restrictions proposed by most sectors, stating that monitoring requirements will help to address impacts of fishing inshore and help to minimize misreporting. MA DMF also expressed support for the restriction, but noted that allowing vessels to fish in the offshore portion of GOM and GB on the same trip will not address misreporting. Additionally, MA DMF expressed some concern that it may be difficult to get members to agree to this policy.

*Response:* Most sectors have proposed a provision to restrict a vessel's fishing activity in the GOM, unless an observer is onboard. We support the sector's proposal, which attempts to address both misreporting and area access issues. We think that this measure addresses some reports of misattributing catch, but acknowledge that, as approved, it may not address all concerns because it does not completely restrict fishing between the GOM BSA and other BSAs. Given that this provision would provide help addressing misreporting, we are approving this provision for use in FY 2013. Through SIMM, we have provided information to sector managers to aid in the identification of such trips, and expect the sectors to enforce this operations plan provision within the sector. Several sectors have retained the right to remove the inshore GOM restrictions from their final operations plans.

*Formalizing a Process To Revoke an Exemption Inseason*

*Comment 51:* NSC and NESSN expressed concern about our attempt to broaden the authority to revoke an exemption inseason. NSC recommended withdrawing this proposal until it can be fully vetted by the Council.

*Response:* In prior proposed and final rules for sector operations, we have identified our potential need to revoke several exemptions inseason if certain concerns arose or conditions were not met. Our intention was to provide additional information in the proposed rule on the administrative process for revoking an exemption through notice in the **Federal Register**, consistent with APA, and not to expand our authority to do so. Several exemptions have again been approved for FY 2013 with conditions to ensure that they operate consistent with their objectives and do not jeopardize fishing mortality objectives. Additionally, we will inform sectors of any concerns prior to considering an exemption revocation to allow time for the sector to address those concerns.

*Comment 52:* NSC and NESSN also commented that we should proactively communicate with sectors when considering revoking an exemption. Not doing so would weaken sectors and harm sector participants, especially as upfront collaboration has previously proven successful.

*Response:* We agree. We communicate with sector managers on a regular basis on issues including data management, quota management, membership changes, and questions regarding regulations. Joint monitoring has been an integral part of sector management for FYs 2010 through 2012. We intend to continue this communication and will attempt to address any issues as they arise. Any action taken to revoke a sector exemption would require communication with the sector throughout the process of notifying the public. Again, our intent was to provide additional information on the administrative process for revoking an exemption and to provide advance notice of this to the public through the **Federal Register** in the FY 2013 proposed rule.

*Comment 53:* MA DMF questions the thresholds that would be used for revoking an exemption, and sought clarification on whether exemptions would be disapproved individually or as a whole. CLF and Pew supported the idea of taking inseason action if data indicated that an exemption increased mortality, or if issues resulted from monitoring requirements.

*Response:* As in previous years, we intend to monitor usage of exemptions to ensure that they operate consistently with their objectives and conditions and do not jeopardize fishing mortality objectives. We also intend to monitor compliance with certain exemption requirements during the FY. The RA has previously retained the right to rescind an exemption if sectors were determined to be out of compliance with the requirements of the exemption (e.g., bycatch requirements, catch composition requirements, VMS requirements, ASM coverage requirements, etc.). We will continue to monitor the use of and compliance with exemption requirements, and would only consider revoking an exemption if certain exemption requirements,

outlined in the proposed rule are not met.

*Sector EA*

*Comment 54:* Pew and CLF commented that sector operations and exemptions are being considered with only limited analysis in the sector EA.

*Response:* We prepared the required NEPA documentation to accompany the 17 sector operations plans we received for FY 2013, and the EA describes the potential impacts of approving FY 2013 sector operations plans on the human, physical, and biological environment and concludes that all beneficial and adverse impacts of this action have been addressed to reach the conclusion of no significant impacts. We believe that the sector EA includes sufficient analysis to support the approved sector measures. The Council established a process requiring sectors to develop operations plans and EAs to analyze their proposed operations. Since FY 2010, NMFS has either paid a contractor drafted the supporting analysis. We have signed a FONSI stating that sector operations will not significantly impact the quality of the human environment, and all beneficial and adverse impacts of the Proposed Action have been addressed to reach the conclusion of no significant impacts.

*APA Comments*

*Comment 55:* CLF and Pew noted that the proposed rules for FWs 48 and 50 and for sector operations plans were published out of logical sequence, contrary to the requirements of the APA. Finally, one industry member urged us to publish a final rule as early as possible to allow industry the maximum amount of planning time in advance of FY 2013.

*Response:* Due to unexpected changes in stock status, the Council required additional time to determine stock allocations for FY 2013, which delayed our ability to publish the proposed sector rule and the proposed rules for FWs 48 and 50 in the **Federal Register**. Each proposed rule was published as soon as possible, to provide the maximum amount of time for the public to comment for sectors to plan in advance of FY 2013. This resulted in the proposed rule for sector operations publishing first, followed by the proposed rules for FWs 48 and 50. We provided a 15-day comment period for this rule; a longer comment period would have been impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. A vessel enrolled in a sector may not fish in FY 2013 unless its sector operations plan is approved. If the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2013. Both of these options would have negative impacts for the permits enrolled in the sectors.

To ensure that the final rule published in advance of the start of FY 2013, we reduced the comment period to 15 days. We published this rule as quickly as possible following the close of the comment period, while taking the appropriate amount of time to carefully consider the approval or disapproval of each exemption or measure, and review and respond to each comment.

*Comment 56:* CLF, Pew, and DMF stated there was limited opportunity to comment on several interrelated rules (this action, FW 48, and FW 50). Oceana requested an extension of the comment period associated with the proposed rule to allow time for an external review of the analysis supporting ASM coverage rate determination. They recommended that the Council or the Council's Science and Statistical Committee review the analysis to ensure that it is suitable.

*Response:* As stated above, we provided a 15-day comment period for this rule; a longer comment period would be impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. We have posted additional information on our Web site responding to Oceana's request for additional information on data timeliness and the analysis conducted to determine the required level of ASM coverage for FY 2013. Based on these comments, we are providing the public additional opportunity to comment on the ASM coverage level. In addition, we are also accepting additional comment on revisions to the exemption from the limits on the number of gillnets imposed on Day gillnet vessels in this interim final rule.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is exempt from review under Executive Order (E.O) 12866.

The AA finds good cause under 5 U.S.C. 553(d)(1) and (3) to waive the 30-day delay in effectiveness so that this final rule may become effective upon filing because this rule relieves several restrictions. Sector Operation Plan exemptions grant exemptions or relieve restrictions that provide operational flexibility and efficiency that help avoid short-term adverse economic impacts on NE multispecies sector vessels. When the 17 approved Sector Operations Plans become effective, sector vessels are exempted from common pool trip limits, DAS limits, and seasonal closed areas. These exemptions provide vessels with flexibility in choosing when to fish, how long to fish, what species to target, and how much catch they may land. They also relieve some gear restrictions, reporting and monitoring requirements, and provide access to additional fishing grounds through the authorization of 23 exemptions from NE multispecies regulations for FY 2013. This flexibility increases efficiency and reduces costs.

In addition to relieving restrictions and granting exemptions, avoiding a delay in effectiveness avoids significant adverse economic impacts. A delay in implementing this rule would prevent owners who joined a sector in FY 2013 (854 permits, 58 percent of eligible groundfish permits accounting for 99 percent of the historical NE multispecies catch) from fishing during the delay and would diminish the advantage of the flexibility in vessel operations, thereby undermining the intent of the rule. During any delay, sector vessels would be prohibited from fishing for groundfish. Being prohibited from fishing for up to 30 days would have a significant adverse economic impact on these vessels because vessels would be prevented from fishing in a month when sector vessels landed approximately 10 percent of several allocations, including GB cod east and GB winter flounder. Further, sector vessels could only fish during this delay if they chose to fish in the common pool. Once they switched to the common pool, however, they could not return to a sector for the entire fishing year and would forego the flexibility and economic efficiency afforded by sector exemptions. Vessels choosing to fish in the common pool to avoid a 30 day delay in the beginning of their season would then forego potential increased flexibility and efficiencies for an entire fishing year. For the reasons outlined above, good cause exists to waive the otherwise applicable requirement to delay implementation of this rule for a period of 30 days.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider

the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to $4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule, as required by section 604 of the RFA. The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA); the relevant portions of the proposed rule describing sector operations plans and requested exemptions; the corresponding analysis in the EA prepared for this action; the discussions, including responses to public comments included in this final rule; and this summary of the FRFA. A copy of this analysis is available from NMFS (see **ADDRESSES**).

**Need for, and Objectives of, This Rule**

Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. The intended effect is to provide vessels participating in sectors with increased operational flexibility. The flexibility afforded sectors includes exemptions from certain regulations, as well as the ability to request additional exemptions. The objective of the action is to authorize the operations of 17 sectors in FY 2013, and to allow the permits enrolled in sectors and the NE communities where they dock and land to benefit from sector operations.

**Summary of Public Comments**

All public comments, including those in response to the IRFA and comments regarding the economic effects of the rule not specifically addressed in the IRFA, and our response to those comments, are contained in this preamble. We received several comments on the economic impacts of monitoring. These are summarized in Comments 10 through 13 and their responses.

**Description and Estimate of the Number of Small Entities Affected**

We have recently worked to identify ownership affiliations, and incorporated that data into this analysis; consequently, this analysis may differ from analysis conducted in previous years. Efforts to more accurately identify ownership affiliations are ongoing. For the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. For example, only permits with identical ownership personnel are categorized as an ownership entity.

The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 303 ownership entities (301 qualifying as small entities)—the number of entities anticipated to enroll in the 17 sectors that have submitted operations plans for FY 2013. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2013, the number of permits participating in sectors on May 1, 2013, and the resulting sector ACE allocations, are likely to change slightly. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2012, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2013.

The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, and upcoming FW 48, and FW 50, which have placed additional effort restrictions on the NE multispecies fleet.

**Reporting, Recordkeeping and Other Compliance Requirements**

This final rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. This action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action will be documented in an LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block will reduce the reporting burden for ownership entities with sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Ownership entities that include any sector vessels receiving an exemption from the gillnet limit (up to 150 nets) will also be exempt from current tagging requirements, and will instead be required to tag gillnets with one tag per net. Compliance with the tagging requirement will not necessarily require ownership entities with sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, ownership entities with sector vessels that have not previously purchased the maximum number of gillnet tags may need to purchase additional tags to comply with this requirement, at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear requires each ownership entity to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags could be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if an ownership entity chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each, without rigging.

In order to utilize the exemption from the minimum trawl mesh size to target redfish, an ownership entity would need to purchase or utilize a codend of small mesh. At the time the FRFA was prepared, no cost information was available for a 4.5-inch (11.4-cm) mesh codend. The purchase of a 4.5-inch (11.4-cm) mesh codend would depend on an ownership entities' perceived economic benefit of utilizing the exemption, which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP will not change the reporting burden of individual participating ownership entities, as vessels would merely change the recipient of their current daily report.

Other exemptions in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping requirements, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rule implementing Amendment 16, each

approved FY 2012 sector operations plan, and in the draft FY 2013 sector operations plans.

**Duplication, Overlap or Conflict With Other Federal Rules**

This action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

**Steps the Agency Has Taken To Minimize Significant Economic Impacts on Small Entities**

This action will create a positive economic impact for the participating ownership entities that include sector vessels because it mitigates the impacts from restrictive management measures implemented under the FMP. Few quantitative data on the precise economic impacts to individual ownership entities are available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30 ft (9.1 m) in length and for vessels 75 ft (22.9 m) and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the final action provides benefits to sector members that they would not have under the No Action Alternative. This preamble discusses reasons for approval or disapproval of each requested exemption.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, an LOA, or letter of authorization, for each permit holder enrolled in a sector that also serves as small entity compliance guide (the guide) was prepared.

Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter or bulletin, will be sent to all holders of NE multispecies permits enrolled in a sector. The guide and this final rule will be available upon request (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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